

Exhibit 2

**to Rule 56(d) Declaration of Pamela Starsia, Esq.:
Transcript from Preliminary Hearing in
*Commonwealth of Virginia v. Christopher Charles
Cantwell*, taken on November 9, 2017**

1 VIRGINIA: IN THE GENERAL DISTRICT COURT FOR THE COUNTY OF
2 ALBEMARLE

3
4 COMMONWEALTH OF VIRGINIA,

5 Plaintiff,

6 v.

7
8 CHRISTOPHER CHARLES CANTWELL,

9 Defendant

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16 COURT PROCEEDINGS

17 Taken on

18 November 9, 2017
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1 APPEARANCES:

2 Robert Tracci Elmer R. Woodard, III
 410 E. High Street 5661 US Hwy. 29
 3 Charlottesville, VA 22902 Blairs, VA 24527
 Attorney for Commonwealth Attorney for Defendant

4
 5 BEFORE: The Honorable William G. Barkley

6 WITNESSES7 Motion before Preliminary Hearing

8 WITNESSES - Defense DIRECT CROSS REDIRECT RECROSS

9 Kristopher Goad 12

10

11 Preliminary Hearing

12 WITNESSES - Commonwealth DIRECT CROSS REDIRECT RECROSS

13 Kristopher Goad 40 68 107/111 113/119

14 Emily Gorcenski 123 146 185

15

16 WITNESSES - Defense DIRECT CROSS REDIRECT RECROSS

17 Teddy Newcome 194 205

18 David Rotter 212 223

19 Christopher Cantwell 223 236 253

20 Sergeant Pleasants 254 260 262

21 Elliott Cline 264 269 271

22

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MR. WOODARD: Your Honor, I regret to have to bring to the Court's attention what I believe may be a fraud perpetrated on it. That's why I requested privacy. I received this email. It is my only copy of it. I received this email yesterday from Mr. Tracci. I'll let the Court read that.

1 THE COURT: All right, the Court's reviewed the--
2 -

3 MR. WOODARD: I submit to the Court the document
4 marked emailed copy. This is a copy of a criminal complaint
5 in this matter. The operative words are in the middle of it,
6 Cantwell used a gel mace pepper spray at my face and caused
7 me to lose my vision temporarily. Below that the statements
8 above are true and accurate to the best of my knowledge and
9 belief. Signed Kristopher Chaney Goad, Signature, Com-
10 plainant, Kristopher Chaney Goad. The purpose of that---
11 well I'll let you read that.

12 THE COURT: All right, the Court has reviewed the
13 criminal complaint.

14 MR. WOODARD: All right, first going to my duty
15 as his attorney and a humble officer of this court that is
16 all the private session, that's all the private session is
17 about. It's your decision whether it is. It is my duty to
18 bring it to the tribunal's attention. But it's going to
19 cause problems, all of which don't need to be in private
20 session unless, Your Honor, wills that. I have motions
21 based on this. I don't know if you want to hear them now or
22 if you want to bring the public back in because---

23 THE COURT: Well you are the one that requested
24 that it be done in private.

25 MR. WOODARD: Yes, sir.

1 THE COURT: Are you continuing to request that it
2 be done in private session?

3 MR. WOODARD: It's kind of up to you, Judge.

4 THE COURT: You're---you're the one that request-
5 ed it.

6 MR. WOODARD: Yes, sir.

7 THE COURT: And you filed it.

8 MR. WOODARD: Yes, sir.

9 THE COURT: And I haven't heard, you know, any
10 motions at this point to receive the information.

11 MR. WOODARD: Yes, sir. So I have done my duty
12 and that's all I really think needs to be private. But I
13 would like the Court to, and Mr. Tracci to consider, I
14 think that, because of the information, I think I have a
15 motion to make on that particular case number that arises
16 out of that. And I think that is going to be another prob-
17 lem. If the Court doesn't want to do that in private ses-
18 sion, it's fine with me. I just wanted to give the Court
19 that option.

20 THE COURT: Well I'm going to make a determination
21 of what's in need for the private session.

22 MR. WOODARD: I think the end---I think the need
23 for the private---my need for the private session is now
24 over.

25 THE COURT: Oh, okay.

1 MR. WOODARD: If you want to entertain those mo-
2 tions in public you can. I can do it either way you want.

3 THE COURT: I haven't heard a motion. The only
4 thing the Court's done is receive these two documents.

5 MR. WOODARD: Okay, then---

6 THE COURT: I don't know what position---I haven't
7 heard from Mr. Tracci. I haven't asked him about it. In
8 his email he indicates a position in regards to the other
9 two charges.

10 MR. TRACCI: Yes, sir, in those cases.

11 THE COURT: It's not absolutely clear from the
12 email, it may be implied as to what he may do in regard to
13 the form where Mr. Goad is---

14 MR. WOODARD: In which case I would move that Goad
15 case be quashed.

16 THE COURT: All right, but I think--there is no
17 reason for that not to be taken up in a public hearing. Is
18 what I think.

19 MR. WOODARD: Right, that's what I'm saying.
20 Yeah. I don't know any reason that the private part is
21 over with.

22 THE COURT: It's over with. All right.

23 MR. WOODARD: And there are motions based on
24 that---I'm going to make a motion to quash.

25

1 THE COURT: Mr. Tracci, you don't have any inter-
2 est in the matter being private at this point?

3 MR. TRACCI: No, sir.

4 THE COURT: All right so these two will be marked
5 as Exhibits with the court reporter and we'll reopen the
6 hearing.

7 MR. WOODARD: Thank you, Your Honor, can we make
8 copies of those? They were the only ones I had.

9 THE COURT: Sure, we can do that. All right the
10 Sheriff's Office can reopen the courtroom and we've got
11 three other cases on the docket along with Mr. Cantwell's.
12 So this is the case of Commonwealth v. Christopher Cant-
13 well. The Court has two other cases on the docket and may
14 have to stop briefly to address those two issues. Before
15 we begin the case of Commonwealth v. Christopher Cantwell,
16 there's been a motion filed by Vice News to record the pro-
17 ceedings. You're here on behalf of Vice News?

18 MR. KELLY: Yes, sir, Your Honor.

19 THE COURT: All right, I'll be glad to hear your
20 motion.

21 MR. KELLY: Yes, sir, Your Honor. Matt Kelly for
22 Vice News. May it please the Court, as you may know, Vir-
23 ginia Code Section 19.2-266 provides the Court with discre-
24 tion to allow video and audio recording of court proceed-
25 ings. We ask that you allow us to record this portion of

1 these proceedings to allow the public to see for themselves
2 that Virginia Courts do indeed provide justice for all and
3 provide justice without regard to who the defendant is or
4 what the party is. We are most certainly willing to abide
5 by any restrictions that, Your Honor, believes are required.
6 We certainly understand that the prosecution and the de-
7 fense do have concerns about recording. And we intend to
8 be as unobtrusive as possible. If there are witnesses that
9 do not want to be recorded, we most certainly will not rec-
10 ord them. But we do believe that this is a case where the
11 public does deserve to have some view into the process.

12 THE COURT: What are you proposing in regard to
13 video? How would that be done?

14 MR. KELLY: Certainly. We have a video camera, a
15 relatively small video camera on a tripod. We can position
16 it anywhere in the courtroom that you would deem adequate.
17 I would suggest that perhaps in the corner there in front
18 of that window behind the rail might be a good place to
19 place the camera in a fairly unobtrusive location, but it
20 could be anywhere in the courtroom that you direct. We can,
21 you know, start and stop recording whenever you direct us
22 to and just do logistics however you would like.

23 THE COURT: And what do you propose from an audio
24 standpoint?

25

1 MR. KELLY: From an audio standpoint we can ei-
2 ther record from the camera which has a built in microphone
3 or we would have a sound person with a microphone in the
4 (unintelligible) somewhere.

5 THE COURT: Mr. Tracci, does the Commonwealth
6 have a position?

7 MR. TRACCI: Your Honor, the Commonwealth opposes
8 the placement of cameras in the courtroom. The statute
9 does provide the Court very broad discretion to determine
10 whether cameras are placed in the courtroom. But based on
11 the objection of one of the Commonwealth's witnesses and
12 the risk to public safety associated with the notoriety of
13 this trial and the legitimate threat that that person feels,
14 the Commonwealth strongly objects to the placement of a
15 camera in the courtroom.

16 THE COURT: Mr. Woodard?

17 MR. WOODARD: My wonders never cease. I pretty
18 much agree with Mr. Tracci. And, Your Honor, the notorie-
19 ty of this case is my paramount concern as to the identi-
20 ties and relations concerning the witnesses. The truth is,
21 Judge, that there are people trying to identify them and
22 torture them. (Unintelligible) chased them and I don't
23 think just because you come into Court and tell the truth
24 that you should be subjected to that. And we have things
25 in place to where we have people's social security numbers

1 and respect their privacy and I think we should give some
2 consideration to that especially in a volatile case like
3 this.

4 THE COURT: Mr. Kelly, anything else? It's your
5 motion.

6 MR. KELLY: Your Honor, we understand the con-
7 straints of these witnesses and as I said before, we are
8 perfectly willing to not record any witnesses at all if
9 they object to that. I certainly want to protect the pri-
10 vacy of testifying here because of the sensitivity of this
11 case. But we would like to be able to show at least some
12 footage to the public of this court proceeding.

13 THE COURT: The statute does give the Court dis-
14 cretion. Based upon all the circumstances, the Court is,
15 going to deny your motion.

16 MR. KELLY: Thank you, Your Honor.

17 THE COURT: Thank you, Mr. Kelly. We'll proceed
18 with the preliminary hearing. Mr. Tracci?

19 MR. WOODARD: Your Honor, I have some preliminary
20 motions.

21 THE COURT: All right. Mr. Woodard?

22 MR. WOODARD: The first one would be---what time
23 is it? Yeah. What does the Court's clock say?

24 THE COURT: Excuse me?
25

1 MR. WOODARD: What does the Court's clock say?
2 Is it 10:30?

3 THE COURT: Yes, sir.

4 MR. WOODARD: Okay. I would move to quash the
5 case wherein Christopher Goad is the complainant.

6 THE COURT: All right.

7 MR. WOODARD: Your Honor, all right, well I'll
8 submit these to the Court again. Here is Exhibit A. Actu-
9 ally, let me go back. Here is Exhibit A. I received this
10 from Mr. Tracci yesterday. This will be Exhibit B which is
11 the, is now a certified copy of a criminal complaint in
12 this case, but it is a copy of the complaint in this case.

13 THE COURT: Any objection to either document?

14 MR. TRACCI: No, sir.

15 MR. WOODARD: May I have copies of those made
16 again?

17 THE COURT: There's that one, I'll write on this
18 one.

19 MR. WOODARD: Okay. Thank you, Your Honor. I
20 would call the witness Christopher Goad.

21 THE COURT: Christopher Goad. (The witness was
22 sworn at this time.)

23 MR. WOODARD: Who is this gentleman? This is Mr.
24 Goad.

25

1 MR. TRACCI: This is Mr. Rexrode. Your Honor, do
2 you wish to swear the witnesses now or do you just want to
3 focus on Mr. Goad.

4 MR. WOODARD: Who is Mr. Rexrode?

5 MR. TRACCI: Victim witness.

6 MR. REXRODE: Victim assistance.

7 MR. WOODARD: Say again?

8 MR. REXRODE: Victim witness, UVA police.

9 MR. WOODARD: Okay, thank you. Why is Mr.
10 Rexrode before the bar?

11 THE COURT: Is there an objection?

12 MR. WOODARD: I object.

13 THE COURT: All right. Do you want to be heard
14 on the objection?

15 MR. WOODARD: The man is a witness. He's a grown
16 man. I have never seen someone who is not of the bar al-
17 lowed to accompany a witness to the stand and support him.
18 If he wants to show his moral support from the gallery, I
19 have no problem with it, but I don't believe he is entitled
20 to come before the bar of this court. And I don't believe
21 he's entitled to be there. If he wants to move back; then
22 I don't have a problem.

23 THE COURT: This Court has ruled previously on
24 support people being around a witness and I had not permit-
25 ted that. For the record, the officer is just seated in

1 the chairs on the Commonwealth's side, so I overrule your
2 motion.

3 MR. WOODARD: Thank you, Your Honor.

4

5

6 **KRISTOPHER GOAD**, having been duly sworn testifies
7 as follows:

8

9

DIRECT EXAMINATION

10 By: Mr. Woodard

11 Q Can you state your name, sir?

12 A My name is Kristopher Goad.

13 Q Mr. Goad, you were present in Charlottesville
14 at the Rotunda on August 11th, 2017, correct?

15 A That is correct.

16 Q And after that, shortly after that you made a
17 complaint to the magistrate, correct?

18 A That is correct.

19 Q You met with a---before you made that com-
20 plaint you met with one or more law enforcement officers,
21 correct?

22 A That is correct.

23 Q You met with Sergeant Acord

24 MR. TRACCI: Your Honor, I'm going to just object
25 to try to inquire as to the purpose of this examination

1 here. We are going to call Mr. Goad and he will have an,
2 counsel will have an opportunity to cross him as much as he
3 wishes, so I'm suggesting that this might be an unnecessary
4 step at this point. If, Your Honor wishes to allow this
5 questioning to continue, the Commonwealth would like some
6 explanation as to what its purpose is.

7 THE COURT: Are you opposing defense motion to
8 quash the warrant where Mr. Goad is the complainant?

9 MR. TRACCI: We are opposing the motion to quash,
10 Your Honor.

11 THE COURT: He's entitled to present his evidence.

12 MR. TRACCI: Okay.

13 Q May I have exhibit, the complaint? Mr. Goad,
14 I show you a document. Did you mark it just now? Okay, I
15 don't care which one it is. All I need is one.

16 THE COURT: It should be on there. I wrote an A
17 and I wrote a B. Which one have you got?

18 Q That was B. All right, I'm showing you a doc-
19 ument entitled, it's got up at the top email copy. It's
20 Defense Exhibit B. Can you take a look at that document?
21 Do you recognize that document?

22 A Yes, I do.

23 Q I'm directing your attention down here. May I
24 approach the witness, Judge?

25 THE COURT: Yes.

1 Q Could you read beginning right there, please?

2 A It says, the statements above are true and ac-
3 curate to the best of my knowledge and belief.

4 Q And what are the two things by the dots under-
5 neath that?

6 A I swear---by swearing to these facts I agree
7 to appear in court and testify if a warrant or summons is
8 issued and the charge in this warrant cannot be dismissed
9 except by the Court even at my request.

10 Q And there's a name under there, it's Christo-
11 pher Cheney Goad, correct?

12 A That is correct.

13 Q And that is your signature there, correct?

14 A That is correct.

15 Q And could you please read for the Court begin-
16 ning with the word I and going to the word temporarily?

17 A I'm sorry, can you---starting with I and then
18 temporarily?

19 Q Start right here.

20 A Oh, I'm sorry. Well, it's in the middle of a
21 sentence.

22 Q I understand that. Would you prefer to read
23 the whole thing?

24

25

1 A All right. I was with, Cantwell used a jell
2 mace pepper spray at my face and caused me to lose my vi-
3 sion temporarily.

4 Q Thank you. And that's above your signature
5 where you swore to those facts being true to the best of
6 your knowledge, information and belief, correct?

7 A It's to the best of my belief, yes.

8 Q Best of your knowledge.

9 A Best of my knowledge and belief, yes.

10 Q Well, let's go back. Knowledge and belief,
11 correct?

12 A To the---at the time, yes, the best of my
13 knowledge and belief.

14 Q Now, apparently you recently told somebody
15 that that information was not correct, is that right?

16 A That is correct.

17 Q Who did you tell?

18 A I told the Commonwealth's Attorney.

19 Q Okay. Let's stop there for a second. Is that
20 Mr. Tracci or----

21 A That is correct.

22 Q Okay. When did that happen?

23 A I'm not, I don't remember what day I said that.

24 Q Was it yesterday?

25 A No, it was before yesterday.

1 Q Was it Monday or Tuesday?

2 A I don't remember what day.

3 Q Was it this week?

4 A I don't remember what day.

5 Q Was it last week?

6 A I don't---

7 MR. TRACCI: Your Honor, I think---

8 Q Okay.

9 MR. TRACCI: It's been asked and answered.

10 Q (Unintelligible) rule on that.

11 THE COURT: All right.

12 Q And your statement now is that your statement
13 in that sworn paper is not true. Is that right? Is that
14 your position now?

15 A Are you asking me if the entirety of the
16 statement or---

17 Q No, I'm asking you if that line that says I
18 was with, Cantwell used---well, Cantwell used a gel based
19 pepper spray at my fact and caused me to lose my vision
20 temporarily.

21 A Is you're asking if I would like to make revi-
22 sions to that if I could?

23 Q No, that's not the question. The questions is,
24 is that statement true today?

25 A Is the statement true today?

1 Q Yes.

2 A Then I would say that it is not completely
3 true.

4 Q Your answer is no, that is not a true state-
5 ment. Right?

6 A Correct.

7 Q In fact, the truth revealed to Mr. Tracci re-
8 cently is that someone else used gel mace pepper spray at
9 your face, correct?

10 A There were multiple people.

11 Q Someone else besides Chris Cantwell, right?

12 A That is correct.

13 Q Okay, but you wrote on this piece of paper,
14 under oath, it was Chris Cantwell, isn't that right?

15 A That is correct.

16 Q Who told you it was Chris Cantwell?

17 A I was able to make that identification after
18 seeing videos on him online as well as other people making
19 that identification and confirming.

20 Q What other people made that identification?

21 A Do you want me to name every person who made
22 that---

23 Q Yes, I do.

24 A That would be---

25 MR. TRACCI: I object on relevance, You Honor.

1 Q I don't, Your Honor. Let me go back. I'll
2 withdraw it.

3 THE COURT: You're withdrawing the question?

4 Q I'll withdraw it.

5 THE COURT: All right.

6 Q Before August 11th had you ever met Mr. Cant-
7 well?

8 A Before August 11th I had not met Mr. Cantwell.

9 Q After August 11th had you met Mr. Cantwell?

10 A I have continued to never have contact with Mr.
11 Cantwell.

12 Q Okay. So, it would be a fair statement to say
13 that as of August 11 you don't have any idea whether I'm
14 Chris Cantwell or not.

15 A I would not agree with that statement.

16 Q Okay. So you'd recognize Chris Cantwell be-
17 fore the 11th?

18 MR. TRACCI: Your Honor, the witness has testi-
19 fied already that he identified Mr. Cantwell after review-
20 ing video evidence.

21 Q I understand that.

22 THE COURT: Go ahead.

23 Q So you're reviewing video evidence and does
24 the video evidence identify him as Mr. Cantwell?

25 A Yes.

1 Q How does it do that?

2 A I believe even on social media he admitted
3 that was him in photos and videos.

4 Q Okay, and so you decided he was the one who
5 sprayed you with gel mace pepper spray, right?

6 A Yes.

7 Q Did anyone else tell you that that was Chris
8 Cantwell? Did Officer Acord tell you that was Chris Cant-
9 well?

10 A Officer Acord, did not tell me that was Cant-
11 well.

12 Q Okay. Did Emily Gorcenski?

13 MR. TRACCI: Asked and answered, Your Honor.

14 Q No, I didn't. I didn't ask him about Emily.

15 THE COURT: Counsel has a right to make a deter-
16 mination of what the witness was relying on when he identi-
17 fied Mr. Cantwell.

18 Q Okay, so you were relying on social media to
19 identify him, is that right?

20 A Among other things, yes.

21 Q So you swore the truth to something you saw on
22 the internet and on social media, correct?

23 A Among other things, yes.

24 Q Did you try to confirm that that was Mr. Cant-
25 well?

1 A Can you elaborate?

2 Q What did you do to confirm that that was Mr.
3 Cantwell as opposed to someone else, anything?

4 A I'm sorry, I don't understand your question.

5 Q Well, you said that the internet and social
6 media identified the guy with the gel mace as Mr. Cantwell.
7 What did you do to verify that? Did you look up Mr. Cant-
8 well's web page or his pod casts and verify his picture?

9 A Yes, as well as his own quote saying that he
10 had maced people.

11 Q Okay, but he never said he maced you, right?
12 And so you just assumed that the macing you got was from Mr.
13 Cantwell, right?

14 A That is correct.

15 Q And you swore under oath that it was from Mr.
16 Cantwell.

17 A That is correct.

18 Q But, in fact, it's from somebody else with a
19 dragon tattoo on his arm, correct?

20 A That is not correct.

21 Q And, in fact---well, you got maced---the gel
22 mace guy has a dragon tattoo on his arm, correct?

23 A Specifically a gel mace then only a gel mace.

24 Q The guy with the gel mace had a dragon tat-
25 tooed arm, right?

1 A Among other people who had mace, yes.

2 Q No, I'm talking about the guy with the dragon
3 tattoo arm, and that wasn't Mr. Cantwell, was it?

4 A I don't understand.

5 MR. TRACCI: Your Honor, respectfully I think the
6 witness has repeatedly acknowledged that the person who he
7 thought sprayed him directly was not Mr. Cantwell. He
8 identified subsequently that he was not, and he's acknowl-
9 edged as much. I think that's been asked and answered
10 about six times now.

11 THE COURT: In the Court's view Mr. Woodard has a
12 right to examine the witness in regard to how he arrives at
13 his statement under oath that Cantwell used the gel mace
14 pepper spray. He didn't know him before August 11th. On
15 August 17th before the magistrate you identify him. What
16 did you rely upon for your identification?

17 A I used various social media sites as well as
18 other people told me who it was. I looked at the face, it
19 was a positive match upon looking at numerous photos of him
20 that were available online as well as his own testimony
21 online with him saying that he had maced people that night.

22 Q So you watched the videos?

23 A Which videos are you referring to?

24 Q Well, videos of your macing?

25 A Yes, I have.

1 Q Okay. Let's go back. What other people told
2 you that? You're now testifying that you verified it
3 through other people. I want to know who they are.

4 A What people?

5 Q Yeah, what people verified it?

6 A I'm not going to list the name of every single
7 person who has, but I will say that of people in the court
8 that would be Emily Gorcenski.

9 Q Okay, so Emily Gorcenski told you it was Cant-
10 well, right?

11 A That is correct.

12 Q Okay. Okay. Now, and a week later or a week
13 before the preliminary hearing you, with thunderclap sur-
14 prise, realized that it is not Chris Cantwell, correct?

15 MR. TRACCI: I think counsel is mischaracterizing
16 with his theatrical metaphors about thunderclaps and so
17 forth.

18 Q I'll withdraw the thunderclap. You met with
19 the Commonwealth's Attorney?

20 A Yes.

21 Q And the Commonwealth's Attorney, is that the
22 first time this misidentification comes on?

23 A Yes.

24 Q Okay. And that puts a new wheel on the wagon.

25 A Correct.

1 Q Your Honor, I would now like to review the
2 video, or at least one of them, by which Mr. Goad claims
3 that he identified Mr. Cantwell.

4 THE COURT: All right. Yes?

5 MR. TRACCI: May the Commonwealth be heard on the
6 motion to quash?

7 Q I'm not done with the motion.

8 THE COURT: He hasn't presented his evidence. If
9 the Commonwealth is not opposing the motion to quash,
10 there's no point in having the hearing, but otherwise I've
11 got to have a hearing. Now, if the Commonwealth has any
12 other motion in regard to that charge---

13 Q Permission to roll---well, let me explain this,
14 Judge. I am not sure my computer is compatible with you-
15 all's computer, so I brought (unintelligible) so I can ask
16 him to review it.

17 THE COURT: One issue. You have raised the issue
18 of the identification by the witness and when it occurred.

19 Q Yes, sir.

20 THE COURT: All right. Mr. Tracci has just said
21 that he's not going to make any motion in regard to that
22 charge.

23 Q Yes, sir.

24

25

1 THE COURT: All right. So what is the effective-
2 ness of me hearing your evidence on a motion to quash be-
3 cause don't I have to hear from Mr. Tracci?

4 Q I haven't finished. I'm still, I'm still put-
5 ting on evidence for the motion.

6 THE COURT: Right, I understand that, but if the
7 Commonwealth is not going to make any motion---

8 MR. TRACCI: With respect to the, with respect to
9 his motion we are not going to amend it, but we will obvi-
10 ously move to certify the charge.

11 Q Not the---not the right motion, Judge.

12 THE COURT: The email from your office notifies
13 Mr. Woodard of some, of the issues in regard to the wit-
14 ness's identification. Based upon that, is it possible
15 that the Commonwealth would have some motion in regard to
16 that charge? If the Commonwealth is not going to, then it
17 seems to me aren't we back with they're going to have to
18 prove probable cause in regard to that charge? And I'm
19 just not sure of the efficacy of having you put on a series
20 of evidence and then the Commonwealth puts on the evidence,
21 then what are we going to take up if there's a preliminary
22 hearing? Isn't it more logical to hear from the Common-
23 wealth in regard to what their evidence is and you cross-
24 examination and you present evidence and then we'll see
25 what the status of that charge is?

1 Q I don't think so, Judge, and here's why. It's
2 complicated. The Commonwealth has an outstanding charge
3 based on the sworn statement, sworn false statement of Mr.
4 Goad. It seeks today to---

5 MR. TRACCI: Your Honor, I think counsel has
6 clearly misstated the nature of that complaint. At the
7 time it reflected the witness's true and accurate belief.
8 It was not a false statement.

9 THE COURT: You can argue it however you want to.
10 Go ahead. The issue you've raised has got to be resolved,
11 there's no question about it.

12 Q Yes, sir. Yes, sir.

13 THE COURT: I'm just wondering about aren't we
14 doing it in a reverse order.

15 Q And it is wise to wonder and I'm telling you
16 why I don't think we can do it in reverse order.

17 THE COURT: Okay, tell me why we shouldn't do it
18 in reverse order.

19 Q Because if we get to probable cause and let's
20 say, and let's say the case is not certified, okay. Then
21 Mr. Tracci has the option of indicted my client on this ex-
22 act same charge.

23 THE COURT: Right.

24 Q On the other hand, if the warrant is quashed
25 because the supporting criminal complaint is now false,

1 then that counts as an acquittal for my client and he can't
2 indict him later. That's why we need to do it in this or-
3 der. And my client is real worried about getting---no mat-
4 ter what we do today, my client real worried about getting
5 indicted on this. And if all we're going to fight, all
6 we're going to do---if we spend the whole morning here
7 fighting this out---

8 THE COURT: I don't see any way this Court can
9 permanently dispose of a felony charge.

10 Q I understand that, Judge. I'm not sure you
11 can either, but I'd rather configure it as a quashed war-
12 rant.

13 THE COURT: That may be a preference.

14 Q Yeah.

15 THE COURT: Okay.

16 Q And then if---

17 THE COURT: You could put on five hours of evi-
18 dence, all right, and raise questions in regard to the
19 identification. Mr. Tracci then puts on another witness
20 who identifies him.

21 Q Okay.

22 THE COURT: Okay.

23 Q Okay.

24 THE COURT: So five hours may be valuable in some
25 other forum, all right, so why do we do it this way?

1 Q Yes, sir.

2 THE COURT: I'm just having difficulty seeing if
3 you want---you've asked some preliminary questions and he's
4 answered them. So he's on the record in regard to how he
5 made the identification, okay. And it seems to me the bur-
6 den is always on the Commonwealth and Mr. Tracci has not
7 indicated that he's going to back off on the charge.

8 Q Yes, sir.

9 THE COURT: So let him present his case and you
10 cross-examine him and we'll see where it goes. I just
11 don't see why it's not more logical to go back and let's
12 have a preliminary hearing.

13 Q You're exactly right, Your Honor, and I will
14 end my argument on the motion to quash by asking you to
15 grant it on the following grounds. In Virginia a criminal
16 warrant that's not signed by a law enforcement officer has
17 to be signed by a citizen and authorized by a law enforce-
18 ment officer. This is a false---this affidavit is not the
19 truth, therefore I do not believe the Court can proceed to
20 hear a charge that started with a falsehood, okay. I don't
21 think you can do it. The Court cannot participate in a
22 fraud. And so I do not believe that the Court can go for-
23 ward on that case with a fraudulent and false criminal com-
24 plaint supporting it. I think that case number is dead and
25 should be quashed. Now, that's going to create, that's go-

1 ing to create another problem. It's not part of the motion
2 to quash, but we'll get there then. I do want that, I
3 don't think this Court can go forward on that warrant with-
4 out a more or less true, or true criminal complaint to sup-
5 port it. And I cite for that, I apologize, but I've got to
6 do it, Judge, Article 1 of the Constitution of Virginia,
7 in criminal prosecution a man has a right to demand a cause
8 and nature of his accusation. Mr. Tracci's email says he's
9 now going to try to pivot and call Mr. Goad here to testify
10 that something else happened besides Cantwell used a gel
11 mace pepper spray in my face and caused me to lose my vi-
12 sion temporarily. Mr. Tracci thinks he can amend the
13 charge, but he can't amend the warrant---or I'm sorry, he
14 can't amend the sworn statement and that's what he's trying
15 to do. He wants to go forward on that charge by changing
16 what's in the sworn statement and he's going to use him to
17 do it. And I don't think that's proper because that means
18 he doesn't have any idea---in twenty-four (24), less than
19 twenty-four (24) hours before this hearing he finds out the
20 not cause or nature of the charge against him. We've been
21 preparing for that. In less than twenty-four (24) hours
22 now he's going to say oh, he sprayed me some other time
23 with something other than gel mace spray or somebody else
24 sprayed me. God knows what he's going to say. And I think
25

1 that has to be, I think that case number has to be quashed
2 or it violates my client's right to due process.

3 THE COURT: All right, what the Court is going to
4 do, I'm going to take your motion under advisement. We're
5 going to conduct the preliminary hearing in the standard
6 fashion. Mr. Tracci is going to call witnesses, you can
7 call witnesses, you can cross-examine. At the conclusion
8 of the Commonwealth's evidence if you want to take it up,
9 I'll take up your motion. All right, who is your first
10 witness going to be?

11 MR. TRACCI: It's going to be Mr. Goad.

12 MR. WOODARD: I've got another motion, Judge.

13 MR. TRACCI: May I make one clarification?

14 THE COURT: Yes.

15 MR. TRACCI: Defense counsel indicated that this
16 is the first they ever heard that this misidentification
17 might have taken place. I think yesterday in our conversa-
18 tion---

19 MR. WOODARD: I'm sorry, I heard yesterday.

20 MR. TRACCI: I called you yesterday and you said
21 don't worry, we knew that, so we did our part to provide
22 you with information helpful to the defense.

23 MR. WOODARD: Yes, you did.
24
25

1 MR. TRACCI: I take very strong umbrage that he's
2 suggesting that one, we're either withholding information
3 or two you were unaware of this misidentification yesterday.

4 MR. WOODARD: Mr. Tracci, you more than fulfilled
5 your ethical obligation.

6 MR. TRACCI: Thank you.

7 MR. WOODARD: You did not withhold any infor-
8 mation---

9 MR. TRACCI: Thank you.

10 MR. WOODARD: As far as I can tell because what
11 he told you is a little fuzzy, but as far as I know, you
12 notified me with all possible dispatch. But, just because
13 I know it, doesn't mean they don't have to put it on the
14 paper and so---

15 THE COURT: I'll look forward to the preliminary
16 hearing. You have another motion?

17 MR. WOODARD: I have a couple of other motions,
18 Judge.

19 THE COURT: Okay. What's your second motion?

20 MR. WOODARD: As to the two charges where com-
21 plainant Goad---I'm done with him.

22 THE COURT: He's going to be the first witness.

23 MR. WOODARD: Okay. As to the two charges con-
24 cerning the complainant Goad, I move to strike the 18.2-52
25 one---I'm sorry, Gorcenski. I move to strike the 18.2-52

1 one on the grounds that it is double jeopardy and in viola-
2 tion of the United States Constitution. I need to get my
3 statutes, Judge. Jeremy come on back over here, please.
4 Your Honor, the Gorcenski charges, there are two of them,
5 18.2-52, 18.2-312. 18.2-52 requires that the Commonwealth
6 prove, and they've amended (unintelligible) but that's not
7 really the contention. Maliciously causes any other person
8 bodily injury by means of any acid, lye or other caustic
9 substance. The rest of it's not particularly---the rest is
10 not particularly applicable. 312 says--I'm sorry, it's
11 applicable but not in dispute. 312 says, if any person ma-
12 liciously release or cause or procure to be released in any
13 place of public gathering any various gases or noxious or
14 nauseating gases or mixtures of chemicals designed to, and
15 capable of, producing vile or injurious, etcetera, okay,
16 the proof is the same for both. He's got to prove malice.
17 He's got to prove caustic or noxious and he's got to prove
18 bodily injury. If you look at the Gorcenski complaint she
19 basically says she was affected one time. And curiously
20 that same criminal complaint supports both of those charges.
21 I want to make sure this is the right case, yes, in Sommer-
22 ville v. Commonwealth of Virginia, Court of Appeals of Vir-
23 ginia, unpublished record number 053-14-2 (unintelligible)
24 remember the case. Ms. Sommerville was shoplifting and she
25 made it outside the store and the loss prevention guy

1 stopped her and so she pepper sprayed him and was arrested.
2 She was charged under 312, not 52 and she got convicted.
3 And it went to the Virginia Court of Appeals. And she had
4 a whole bunch of arguments why 312 didn't apply none of
5 which they bought, but one of her gripes was that she
6 should have been charged with 312--52, not 312 and here is
7 what the Court said. The substance Sommerville sprayed on
8 Houdin, the guard, could have been mace rather than pepper
9 spray. More importantly, however, the classification of a
10 substance, of a caustic substance under 18.2-52 does not
11 preclude the classification of the same substance as a nox-
12 ious gas under the code 18.2-312. A substance may have the
13 characteristics of both a noxious gas under 18.2-312---I'm
14 sorry, a substance may have the characteristics of both a
15 noxious gas and a caustic substance. A noxious gas, for
16 example, may cause both bodily injury through its caustic
17 or burning effects. While Sommerville may have potentially
18 been charged with violating code 18.2-52 based on her ac-
19 tions in the present case, it is well established that the
20 choice of offenses for which a criminal defendant will be
21 charged is within the discretion of the Commonwealth's At-
22 torney, and it cites a couple of cases. I submit that, and
23 I think I only have one copy of the case.

24 MR. TRACCI: I've got the case.

25 MR. WOODARD: You've got it?

1 MR. TRACCI: Yeah.

2 MR. WOODARD: Okay. I would submit that, Judge.
3 I would submit that since what they've got to do is prove
4 caustic substance, bodily injury and malice, that's one
5 event. They only get one bite at the apple. Now, maybe
6 they ought to be able to get, you know, it might be their
7 prerogative to choose which one they want, but I don't see
8 any difference in the elements of either. There is nothing
9 in 312 that they have to prove that that's different than
10 52 and vice versa. Either the Court of Appeals or Virginia
11 Supreme Court has held that the caustic substance works for
12 both statutes. And we're not talking about fire and we're
13 not talking about explosives, they're irrelevant. And I
14 disagree with the Virginia Supreme Court. I humbly submit
15 that if you take a jalapeno and put it on your tongue it
16 burns, but your tongue is still there. On the other hand,
17 if you take some hydrochloric acid and put it on your
18 tongue, your tongue goes away, or at least part of it. It
19 depends on how long he can stand it before he eats the bak-
20 ing soda. So I humbly disagree with the superior court on
21 that, but I hear they have wonderful arguments for believ-
22 ing it. It is the law of Virginia. So, caustic evidence
23 is the same, analysis is the same, bodily injury is the
24 same. I think the Commonwealth only has one bite at that
25 apple and I ask that the 52 charge be dismissed.

1 THE COURT: Mr. Tracci.

2 MR. TRACCI: Does, Your Honor, wish to hear argu-
3 ment on the double jeopardy claim at this point before the
4 Court has even received evidence on those charges?

5 THE COURT: Mr. Woodard is saying that the Court
6 shouldn't receive evidence. Do you want to respond to
7 that?

8 MR. TRACCI: The charges are different, and the
9 Commonwealth does acknowledge Sommerville, but for a propo-
10 sition that supports the Commonwealth's argument that the
11 choice is to charge 18.2-52 and 18.2-312 are within the
12 discretion of the Commonwealth's Attorney. If you look at
13 the elements for 18.2-52, it's maliciously cause bodily in-
14 jury to another by means of acid, lye or other caustic sub-
15 stance. If you look at the elements of 312, it's mali-
16 ciously release in a public place without a named victim as
17 we have in the 18.2-52 charge for Ms. Gorcenski, tear gas,
18 mustard gas, phosgene gas or other noxious or nauseating
19 injurious odors producing bodily injury. It's true that
20 malice is an element for the higher felony in both statutes
21 but Blockburger is not implicated and there is no double
22 jeopardy claim that lies at this point. So we urge the
23 Court to reject the motion.

24 MR. WOODARD: Briefly disagree, Your Honor. It's
25 still bodily injury. I mean, what Mr. Tracci is saying is

1 if you set off a tear gas bomb and there's no bodily injury,
2 and they haven't put on evidence of any bodily injury, it's
3 not a felony, right? If I wanted---from the public place,
4 let's see, what's a place nobody goes, the courthouse lawn
5 in Chatham. I can go there, I could set off a tear gas
6 bomb. If there's no bodily injury, it's not a crime. But
7 for 52 it says there has to be bodily injury. Well,
8 they've still got to prove bodily injury. Of course,
9 there's bodily injury to another. If I set off a tear gas
10 station in my own---here's the question---if I shoot myself
11 with tear gas is that a crime. I have bodily injury.
12 There's no bodily, you know, doesn't have to prove bodily
13 injury, then where's the crime? It's still the same thing,
14 substance, malice, bodily injury on somebody.

15 THE COURT: The Court overrules your motion.

16 MR. WOODARD: Yes, sir.

17 THE COURT: Do you have a third motion?

18 MR. WOODARD: Yes, sir. I make another (unintel-
19 ligible)

20

21 (Pause in case while other cases taken up.)

22

23 THE COURT: All right, Mr. Woodard, you had an-
24 other preliminary motion?

25 MR. WOODARD: Yes, sir.

1 THE COURT: All right.

2 MR. WOODARD: I ask that a special prosecutor be
3 appointed. My speaking with Mr. Goad---

4 THE COURT: Do I have authority to do that?

5 MR. WOODARD: Well, then I would ask that the
6 Commonwealth's Attorney's Office be disqualified because---

7 THE COURT: Isn't that a circuit court matter?

8 MR. WOODARD: Well, I'm here and a day before
9 this preliminary hearing I find out that one of the com-
10 plaints first disclosed to Mr. Tracci---

11 THE COURT: Do I have authority to do it?

12 MR. WOODARD: I believe you do or you certainly
13 have an opportunity to say I'm not sure if I have authority,
14 let's figure this out. I'm not sure, I've never had a---

15 THE COURT: As I understand it, based upon the
16 circuit court's ruling, your client is being held without
17 bond. Do you want me to continue this case?

18 MR. WOODARD: Not really.

19 THE COURT: All right. Do you have any authority
20 that I have the authority to tell Mr. Tracci he can't pros-
21 ecute the case in Albemarle County?

22 MR. WOODARD: No, sir.

23 THE COURT: Do you have any authority?

24 MR. WOODARD: No, sir. Okay.

25

1 THE COURT: It's got to be taken up in the cir-
2 cuit court.

3 MR. WOODARD: Yes, sir.

4 THE COURT: All right. Any other preliminary mo-
5 tions?

6 MR. WOODARD: It's just a question of the wit-
7 nesses.

8 THE COURT: Testimony has already begun. Do you
9 want to make a motion?

10 MR. WOODARD: I'd move to sequester the witnesses,
11 but, Your Honor---

12 THE COURT: Yes, sir.

13 MR. WOODARD: I would ask that we are discreet in
14 figuring out whom those sequesteries (sic) are going to be.

15 THE COURT: Well, I'd rely on counsel for that
16 since I don't call witnesses. But there's a motion to se-
17 quester.

18 MR. WOODARD: Yes, sir.

19 THE COURT: All right, so if the Commonwealth
20 would just make sure their witnesses are sworn and defense,
21 make sure your witnesses are sworn. Anybody that may tes-
22 tify in this case if you'll stand up.

23 MR. WOODARD: Your Honor, permission to unap-
24 proach (sic) and go hunt them down.

25

1 THE COURT: Ladies and gentlemen, the motion
2 that's been made is that the witnesses be sequestered.
3 What that means is that anyone who anticipates that they're
4 going to testify, you need to wait outside until you're
5 called to testify. While you're waiting you shouldn't dis-
6 cuss the case with anybody or allow them to discuss it with
7 you. So if you think---counsel are making sure that any-
8 body who may be a witness is identified so you can all be
9 sworn at the same time. Mr. Goad, you were already sworn.
10 That's good till midnight. We may have to do it again.

11 MR. GOAD: Thank you, Your Honor.

12 THE COURT: All right, so does counsel, counsel
13 identify that all the witnesses they intend to call are be-
14 fore the bar now? All right, each of the witnesses, we'll
15 have you raise your right hand.

16
17 (Witnesses were sworn at this time.)
18

19 THE COURT: Everyone has answered affirmatively.
20 All right, if you'll wait outside. The sheriff will show
21 you where you can wait. We'll get to you as quickly as we
22 can.

23
24 (Witnesses were excluded at this time.)
25

1 MR. WOODARD: Your Honor, was Mr. Goad sworn?

2 THE COURT: He's already been sworn.

3 MR. WOODARD: Okay.

4 THE COURT: All right, so this will begin the
5 preliminary hearing of Commonwealth v. Christopher Cantwell.
6 Mr. Tracci, Mr. Goad has already been sworn.

7 MR. WOODARD: Your Honor, could I have a second
8 to compose myself?

9 THE COURT: Yes, sir.

10 (Pause in case.)

11 THE COURT: Okay, are you ready?

12 MR. WOODARD: Yes, sir.

13 THE COURT: All right, Mr. Tracci.

14

15

16 **KRISTOPHER GOAD**, having been duly sworn testified
17 as follows:

18

19 DIRECT EXAMINATION

20 By: Mr. Tracci

21 Q Good morning. Can you introduce yourself for
22 the Court, please?

23 A Yes. My name is Kristopher Goad.

24 Q And can you spell that for the court reporter
25 please?

1 A That is K-r-i-s-t-o-p-h-e-r and Goad, G-o-a-d.

2 Q And did you travel to Charlottesville on Au-
3 gust 11th?

4 A Yes, I did.

5 Q From where?

6 A From Richmond, Virginia.

7 Q Did you learn about a planned event at the Ro-
8 tunda that night?

9 A Yes, I did.

10 Q How did you learn?

11 A I learned through different social media cites.
12 It was posts all over Facebook, Twitter and I just heard
13 that it was going to happen.

14 THE COURT: Mr. Goad, if you'll direct your an-
15 swers toward me---

16 A Oh, I'm sorry.

17 THE COURT: Then both sides of the courtroom can
18 hear you a little bit better.

19 A My apologies.

20 THE COURT: It's hard when somebody is asking you
21 a question not to look at them, but if you'll direct it to-
22 ward me.

23 A Yeah.

24 Q And what was your goal that night by coming to
25 Charlottesville? What were you thinking?

1 A My goad that night was to---

2 MR. WOODARD: Objection, Your Honor. His goal as
3 to why he was there is utterly irrelevant and I would an-
4 ticipate is going to be self-serving.

5 Q Your Honor, he's explaining why he was in
6 Charlottesville that evening. It goes to his reason for
7 being here and the allegation it's likely that he was here
8 to cause violence.

9 THE COURT: I think the reason why he came, his
10 goal may not be the issue.

11 Q Yes, sir.

12 THE COURT: Go ahead.

13 A My reason to come was to have a peaceful pro-
14 test, to stand around and just, that's it.

15 MR. WOODARD: I'm sorry, Your Honor, standing
16 around and just---

17 A Oh, I'm sorry. To stand around and just have
18 a peaceful demonstration.

19 Q Have you gone to protests before?

20 A Yes.

21 Q And your intent when you went was to be peace-
22 ful as you pointed out.

23 MR. WOODARD: Objection, Your Honor. His intent
24 is not an issue and now it's a lot more than how he got to
25 Charlottesville.

1 Q Can you describe what happened when you got to
2 the Charlottesville campus, Rotunda, in Albemarle County
3 that day?

4 A When I arrived, I saw people scattered around
5 the statue and I tried to talk to as many people as we
6 could and reaffirmed our commitment to---

7 MR. WOODARD: Objection, Your Honor, irrelevant.
8 He was around the statue. What he reaffirmed is not really
9 relevant.

10 Q I think he's just answering the question, what
11 he observed when he was there, sir.

12 THE COURT: I can't rule on whether it's relevant.
13 I don't know what he's going to say. Go ahead.

14 A We just reaffirmed that we wanted to have a
15 peaceful protest against people who were going to come by.

16 Q And how many, just for the sake of simplicity,
17 the sake of simplicity, we'll refer to the protestors and
18 counter protestors, it's a neutral way of describing thing.
19 You were a---which side were you on?

20 A I would be a counter protestor.

21 Q And can you explain to the Court the relative
22 size of the groups?

23 MR. WOODARD: Objection, Your Honor, again, ir-
24 relevant.

25

1 THE COURT: The relative size I assume is what
2 you're talking about, the relative size of what?

3 Q The groups, the protestors and counter protes-
4 tors.

5 MR. WOODARD: I don't see how it's relevant. The
6 issue is whether he got pepper sprayed, not how big the
7 groups were.

8 THE COURT: Some context is important though.

9 MR. WOODARD: Yes, sir.

10 THE COURT: I'll allow that.

11 A I would say that the counter protestors was
12 made up of about fifty (50) and the protestors were made up
13 of a number higher than three hundred (300).

14 Q And what were you doing when you were there,
15 when you saw these protestors with their tiki torches?

16 A I stood with my back to the statue with other
17 people that were also counter protestors.

18 Q Did you have any weapons to inflict harm on
19 anybody with you?

20 A I did not have any weapons that---

21 MR. WOODARD: Objection, Your Honor. This is ir-
22 relevant whether he had weapons. How does that prove Mr.
23 Cantwell pepper sprayed him? It doesn't.

24 THE COURT: I'll allow it. Go ahead.

25 Q And you were chanting, correct?

1 A That is correct, I was chanting.

2 Q What were you chanting?

3 A It would be chants along the lines of black
4 lives matter, things that are, you would consider to be---

5 THE COURT: What were you chanting?

6 A Oh, specific things?

7 THE COURT: That's what he's asking.

8 A Black lives matter was probably the---it was
9 the one we used the most and I'm not certain about all the
10 other ones.

11 Q And what were the---what was your observation
12 of what the protestors were doing when you were chanting?

13 MR. WOODARD: Again, objection, Your Honor. (Un-
14 intelligible) it is still irrelevant to this.

15 THE COURT: Some context is necessary.

16 MR. WOODARD: Yes, sir.

17 THE COURT: Obviously it doesn't make any differ-
18 ent in regard to what position one group may or may not
19 have been taking. That is irrelevant. but the Court has
20 got to have some context to consider the other evidence.
21 Go ahead.

22 Q And we're going to play a video in a moment.
23 Were you throwing any punches? Did you throw any punches?

24 A I did not throw any punches.
25

1 Q And you learned after these events that they
2 had been recorded by a few people, correct?

3 A Yes. After the event I learned that there had
4 been videos of it.

5 Q Is it fair to say you've reviewed these videos
6 a couple of times?

7 A Yes.

8 Q A few times?

9 A More than a few times, yes.

10 Q And gone over those videos and what you
11 learned those videos showed in our office on multiple occa-
12 sions?

13 A Yes, that is correct.

14 Q Okay. Your Honor, I'm going to play a video
15 here and have him authenticate it.

16 THE COURT: Mr. Woodard, any objection to the
17 video?

18 MR. WOODARD: May I consult with the distin-
19 guished Commonwealth Attorney for a second?

20 (Attorneys confer.)

21 MR. WOODARD: I may object less if I see it first
22 (unintelligible) moving things along.

23 THE COURT: If you want, if you want to see it.
24 If there's an objection, I've got to rule on the objection.
25

1 MR. WOODARD: If I think it's what I think it is,
2 then I won't have any objections.

3 THE COURT: All right. If you'll talk to the
4 Commonwealth Attorney. I don't know how long the video is.

5 Q It's very short, Your Honor.

6 (Pause.)

7 THE COURT: Any objection to the admissibility of
8 the video?

9 MR. WOODARD: Sir?

10 THE COURT: Any objection to the admissibility of
11 the video?

12 MR. WOODARD: Well, you know, subject to if he
13 lays a foundation. I'm not going to object to authentica-
14 tion and that kind of stuff. I'm not going to (unintelli-
15 gible).

16 Q Would it be easier if Mr. Goad comes up here?

17 MR. WOODARD: Yes, sir.

18 THE COURT: Can you come up here please? Can Mr.
19 Cantwell see it?

20 MR. WOODARD: Yes.

21 Q And what we'd like to do is run this once for
22 you and then we can slow it down. Is the sound up on this?

23 MS. GALLOWAY: It is.

24 Q Okay.

25 (Video was played at this time.)

1 Q So let the record reflect that we're going to
2 begin the video at five seconds into the unicorn riot video.

3 (Video was played at this time.)

4 Q And I'm just going to as she is playing it in
5 slow motion as you motion, ask you could you identify,
6 could you identify that person right there?.

7 A That person is Christopher Cantwell.

8 Q Is he in the courtroom?

9 A Yes.

10 Q Can you identify him?

11 A This man.

12 Q And we're going to identify a person here in a
13 moment---If you could pause it right there, Ms. Galloway.
14 And this is you again, Mr. Goad?

15 A Yes, that is me in the denim jacket right
16 there.

17 Q Okay. That is at 21 seconds in the video on
18 the left side. And can you stop it right there? Now, who
19 are these two individuals here at 23 seconds in? Who is
20 that spraying the mace?

21 A That is Christopher Cantwell spraying the mace.

22 Q Okay, and that's you right there?

23 MR. WOODARD: Objection, Your Honor, to the extent
24 that he is somehow figuring out that that is mace instead
25 of pepper spray I would object. If he's using the word

1 mace as a generic term for self-defense spray, I'm okay
2 with it.

3 THE COURT: He can describe it has he wants and
4 then it would be a matter of argument in regard to what the
5 evidence shows.

6 Q Now, the individual who he is spraying, we can
7 refer to him as beanie man because I understand that's how
8 folks have been recognizing him very widely. Do you know
9 who that individual is?

10 A I have met him before.

11 Q Would it be fair to say that the Commonwealth
12 has asked you to have him come to court?

13 A Yes, I have, yes.

14 Q On more than one occasion?

15 A Yes, very much so.

16 Q And to your knowledge why has he declined?

17 MR. WOODARD: Objection, Your Honor.

18 Q His personal knowledge based on---

19 MR. WOODARD: All right.

20 A It would be because---

21 THE COURT: Wait, wait, I've got to hear the ob-
22 jection and then I'll hear the---

23 MR. WOODARD: His knowledge of somebody else's
24 excuse for not showing up is pretty speculative. I mean,
25 he can answer it but---well, I don't think he can answer it

1 unless he can sit there and say yeah, this person told me,
2 but how do we know it's that guy. Who knows, maybe it was
3 on social media.

4 THE COURT: (Unintelligible).

5 Q How do you know that he doesn't want to be
6 here?

7 A I have spoken to him.

8 THE COURT: That's the question you're objecting
9 to.

10 MR. WOODARD: Yeah, worried about a hearsay re-
11 sponse now, too.

12 Q That goes to his reason and the intent. It
13 doesn't go to the truth of the matter asserted.

14 MR. WOODARD: This is the truth of the matter of
15 why the guy ain't here.

16 THE COURT: What he's---what's the purpose of it?
17 If he's saying how he knows why, how he knows why someone
18 else is not here.

19 Q I want the Court to understand that the Com-
20 monwealth has made every effort to contact this person and
21 for the record to reflect the reason why he's not here.

22 MR. WOODARD: I assume that---

23 THE COURT: But can't---doesn't that have to be
24 based on what somebody told Mr. Goad?

25

1 Q Yes, or other understanding that he might have
2 obtained through---

3 THE COURT: Sustain the objection. What's your
4 next question.

5 Q So beanie man, were you watching what was go-
6 ing on? Obviously you're very close to this event, cor-
7 rect?

8 A Yes.

9 Q Did you see any weapons in his hands?

10 A I saw absolutely no weapons.

11 Q Did you see him strike anyone? Was he violent
12 in any way?

13 A I did not see him strike anyone or be violent.

14 Q What was he doing?

15 A He was chanting along with me.

16 Q What was he chanting to the best of your
17 knowledge?

18 A Black lives matter, the slogan most commonly
19 used that night.

20 Q And if we can back it up again. We're going
21 to show stills of this as well, Your Honor. Okay, now,
22 stop there. This is you. This is obscured for some reason,
23 it looks like a hat of some kind. What are you observing
24 right now?
25

1 A I'm observing the protestors with torches are
2 coming towards us and they are pushing and shoving and it
3 looks like they're throwing blows.

4 Q Where do you think beanie man is here? You'll
5 see in the next frame, but is he on the ground here?

6 A Yes, he's on the ground.

7 Q And here you see him, so that's him right here
8 getting up, correct?

9 A Yes.

10 Q Okay, and then, and then if you could play it
11 please, Ms. Galloway. And then you see that deployment
12 right there and, and if you go back very quickly, did that
13 deployment affect you at all?

14 A Yes, it did.

15 Q And if we can see that again in slow motion,
16 it looks like you're---and I don't want to---what response
17 did you have after this individual identified as Mr. Cant-
18 well deployed mace or pepper gas or a caustic substance or
19 acid or lye in his face? What was your response immediate-
20 ly?

21 A I immediately felt burning on my face.

22 Q Okay, if you could play it again. And you can
23 see in slow motion how you do recoil if that is accurate.

24 MR. WOODARD: Objection, Your Honor. Mr. Tracci
25 is testifying. You can see how he's recoiled.

1 Q Okay. I withdraw the question. I'll rephrase
2 the question. If you can describe, based on the video
3 what---

4 MR. WOODARD: Objection, already answered. He
5 said oh, my face is burning.

6 Q I didn't ask how it affected him.

7 THE COURT: That's another question. Go ahead.

8 Q Okay. What did you do immediately afterwards.
9 Did you turn away?

10 A Yeah. I turned away like this.

11 Q And what else is going on here? What else do
12 you hear? Is that Mr. Cantwell again? And that was another
13 deployment?

14 A Yes.

15 Q Okay. Stop please, Ms. Galloway. What pre-
16 cipitated the---from your perspective was beanie man pre-
17 senting any sort of threat after getting up and being maced
18 in the face?

19 A He was presenting no threat. He was actually
20 coming closer towards the statute with me.

21 Q And there was a second deployment. You saw
22 the torch obscured as a result. Did that affect you?

23 A The second deployment I felt affected when
24 that was released.

25 Q How long afterwards?

1 A It took within a few seconds for me to com-
2 pletely lose my vision and I felt immediate burning on my
3 skin difficulty breathing.

4 Q Okay. And you can return to your seat, Mr.
5 Goad and we're going to play the rest of this video for
6 purposes of---and it's not going to be you directly (unin-
7 telligible) relevance, but, Your Honor, we're just going to
8 play this through for you because it's at 30 seconds now---

9 THE COURT: I understand there's no objection.

10 Q Get the video out of the way. Now, if you can
11 go back, you will see another person other than the person
12 who you identified as Mr. Cantwell spraying mace again or
13 lye.

14 MR. WOODARD: How about if we just call it caus-
15 tic substance.

16 Q Sounds good. This individual right here,
17 right, we'll call him---what was your name for him?

18 MR. WOODARD: Dragon arm.

19 Q Dragon arm. And that hit you as well, cor-
20 rect?

21 A Yes.

22 Q And now we see---what are you observing here?
23 Is that you?

24 A That is me. That is William Fearce (sic) who
25 is swinging a torch at me.

1 Q And if you could pause that, please? And very
2 recently like this weekend and I'll ask you about this, Mr.
3 dragon arm was identified, is that true?

4 A That is what I believe his identification is.

5 Q Okay. And where do you see based on your un-
6 derstanding Mr. Cantwell here?

7 A I can't quite see with the glare. Yes.

8 Q Who is that?

9 A That is him right there throwing blows on an
10 individual.

11 MR. WOODARD: Objection, Your Honor. That's him
12 right there.

13 Q I think he's describing what he sees. That's
14 what he sees. Again, if you just---what is your under-
15 standing of the relative size of the crowd here and the
16 number.

17 MR. WOODARD: Objection, asked and answered.

18 Q I think the Court, I think the Court can see
19 that.

20 THE COURT: Sustain that objection.

21 Q Withdrawn. Okay.

22 THE COURT: Mr. Goad, if you'd have a seat.

23 Q And, Your Honor, I've got several images that
24 capture exactly what we just saw. They're from the actual-
25

1 --they're from the same feed other than this news to share
2 chat folder.

3 MR. WOODARD: That wasn't in there.

4 Q No, that's what I just said, other than this
5 news to share.

6 MR. WOODARD: Okay.

7 Q Do you have any questions about this image be-
8 fore I present it to the Court? Just go through them. And
9 these are all the unicorn riot stills that we just saw.

10 THE COURT: Okay?

11 MR. WOODARD: (Unintelligible)

12 THE COURT: Seen it?

13 MR. WOODARD: I'm done.

14 THE COURT: Okay. Is that compliant?

15 MR. WOODARD: Uh-huh. (Indicating yes.)

16 THE COURT: Good?

17 MR. WOODARD: No. We haven't talked about her
18 yet.

19 Q Well, she's going to testify.

20 MR. WOODARD: That's nice, but---

21 Q Okay. We'll save this until she testifies.
22 Okay.

23 MR. WOODARD: Right. We don't have any objec-
24 tion to those.

25

1 Q For purposes of speed and dispatch, Your Honor,
2 I'm going to ask the witness to identify, is that Mr. bean-
3 ie man as you know him?

4 A Yes, that is him.

5 Q And is that Mr.---who do you think that is, is
6 that Mr. Cantwell?

7 A That is Mr. Cantwell.

8 Q Does he have his finger on something? Does it
9 look like he's got his thumb on something there?

10 A Yes.

11 THE COURT: No objection to this photograph? No
12 objection?

13 MR. WOODARD: Nah.

14 THE COURT: The defense is not objecting to that.

15 MR. WOODARD: No.

16 Q And this is the same here?

17 THE COURT: Mr. Goad, this is the one that you
18 first identified?

19 A Yes. That is Mr. Cantwell on the far left in
20 that picture.

21 THE COURT: All right. This is the second photo-
22 graph?

23 Q Yes. And this you could identify, is that you
24 right there and apparently Mr. beanie man on his knees, is
25 that it right there?

1 A That is correct. That is me in the bottom
2 left corner and Mr. beanie man in the center.

3 THE COURT: No objection?

4 MR. WOODARD: No, sir.

5 Q And this is immediately afterwards. This
6 looks like Mr. beanie man has gotten up. Can you describe
7 the space between Mr. beanie man getting up and the pro-
8 testing sign?

9 A Yes. Mr. beanie man is getting up and it
10 looks like there is approximately six feet of room.

11 THE COURT: I understand for all of these pic-
12 tures there's no objection.

13 MR. WOODARD: Correct.

14 Q And immediate still afterwards, what does this
15 depict?

16 A This would depict Mr. Cantwell coming up to Mr.
17 beanie man in preparation---

18 MR. WOODARD: Objection, Your Honor. He can't
19 tell that from that picture. All he can say is that's
20 beanie man and Cantwell facing off. If he wants to refer
21 back to the video to add that saying this is a still of
22 that fine, but he can't interpret that picture that way.

23 Q He just testified to the fact that Mr. beanie
24 man had been on the ground.

25 MR. WOODARD: Uh-huh. (Indicating yes.)

1 Q And he's going to testify that there was six
2 feet behind Mr. Cantwell. This is immediately afterwards
3 and Mr. Cantwell is in the scene.

4 MR. WOODARD: Right.

5 Q And that's what he's going to testify to.

6 MR. WOODARD: But he can't testify he's going
7 forward. That's what he just testified to. He's in there,
8 though.

9 Q Is it reasonable to say that he had to move in
10 this direction, Mr. Cantwell, to get to this position?

11 MR. WOODARD: It's just as reasonable to say
12 beanie man came up and went at him.

13 THE COURT: So it's a still photograph.

14 MR. WOODARD: Yeah.

15 THE COURT: The photograph speaks for itself and
16 the other testimony.

17 MR. WOODARD: Yeah, the photograph speaks for it-
18 self.

19 Q And this is immediately afterwards, Mr. Goad?
20 Now, can you describe in that picture that the Court is re-
21 viewing and in this picture the posture of Mr. beanie man?
22 Is he an offensive posture, his arms at his side?

23 MR. WOODARD: I'm going to object to the question,
24 Judge, leading.

25 Q Where are his arms in this picture?

1 A Yes, his arms are now below his waist to his
2 side.

3 MR. WOODARD: Objection, the picture speaks for
4 itself.

5 THE COURT: I'll sustain the objection.

6 Q And in this picture what do you see?

7 A I see Mr. beanie man looking away as if he's
8 in pain.

9 MR. WOODARD: Objection, picture speaks for it-
10 self.

11 THE COURT: Sustain the objection. The photo-
12 graphs come in without objection.

13 Q Okay. And this is the other shot you see the
14 aerosol from?

15 A Yes.

16 Q And this is a still of the same thing.

17 MR. WOODARD: I haven't seen that one.

18 Q And if you want that excluded, I think the
19 other picture does the same thing.

20 MR. WOODARD: Yeah, I want this one excluded.

21 Q Okay, okay. Now, you described how you felt
22 after you got--were the recipient of this spray. Can you
23 explain again for the Court what you did and how you felt
24 afterwards?
25

1 MR. WOODARD: Objection, already asked and an-
2 swered.

3 Q What did you do after being sprayed?

4 A After being sprayed and losing vision, I tried
5 to open my eye just enough to see one person I was familiar
6 with, asked them to walk me out of here. I have no idea
7 what direction we went. It feels like we went around the
8 statue multiple times. I was taken to an area where there
9 was not conflicts. I had my eyes flushed out and I then
10 attempted to look for a law enforcement officer to have a
11 statement.

12 Q So you weren't able to immediately identify Mr.
13 Cantwell at that time, were you?

14 A I did not see Mr. Cantwell the rest of that
15 night.

16 Q And you did review video later and based upon
17 that video, what did you do?

18 A I reviewed video and I came back to the Char-
19 lottesville area to swear out a warrant and to complete the
20 process.

21 Q So you signed a statement and then a criminal
22 complaint.

23 A That is correct.
24
25

1 Q And we heard about this earlier, but I'm going
2 to hand this to you for your benefit just to refresh your
3 recollection.

4 A Thank you.

5 Q And the Judge has heard the substance of that,
6 but that was true---was that true information? It won't be
7 leading. Was that statement true to the best of your abil-
8 ity at the time?

9 MR. WOODARD: Objection. He has previously tes-
10 tified that---he just testified that he didn't know who
11 sprayed him. Not which one sprayed him, was it Cantwell or
12 dragon arm, he didn't know who. He's identified three dif-
13 ferent spraying events and he doesn't know who did any of
14 them, and now he's---

15 THE COURT: I'll allow the question to be asked.
16 You can cross-examine him on it.

17 Q You can answer the question.

18 A If I remember the question it was that yes, I
19 filled this out to the best of my knowledge and belief at
20 the time.

21 Q And you did so, is it fair to say, because you
22 thought Mr. Cantwell had sprayed you directly in the face
23 with gel?

24 A That is correct.

25

1 Q And you subsequently learned after reviewing
2 the evidence, what?

3 A I subsequently learned that there was a dif-
4 ferent person spraying mace and it was---

5 Q To your knowledge has this person been posi-
6 tively identified?

7 A This person has---

8 MR. WOODARD: Objection, irrelevant. It's anoth-
9 er person.

10 THE COURT: Do you want to be heard on it?

11 Q No, Your Honor. Withdraw the question.

12 THE COURT: Question is withdrawn.

13 Q So you were---that's not the only event that
14 occurred that evening, correct?

15 MR. WOODARD: Objection, irrelevant. These are
16 the ones he's basing it on. Why do we need to know whether
17 or not they played Monopoly later?

18 Q It's highly relevant Judge because---

19 THE COURT: When you said it's the only event
20 that happened, I'm not sure what that meant.

21 Q Was that the only time that you were, you suf-
22 fered from the effects of a deployment of a caustic sub-
23 stance that evening?

24 A Are you saying that after the first deploy-
25 ment? No?

1 Q No. In your complaint you talk about the gel
2 directly to your face.

3 MR. WOODARD: Objection, he's leading him now,
4 taking him to the complaint. Let him go back and ask the
5 question.

6 THE COURT: That question is all right. I'll al-
7 low it. Go ahead.

8 Q Is that true? That's what the complaint was
9 about?

10 A Yes, that is correct.

11 Q Was that the only time you suffered the ef-
12 fects of a caustic substance that night, August 11th, what
13 you described in the statement?

14 MR. WOODARD: Objection, irrelevant.

15 THE COURT: I'll allow it. Go ahead.

16 A I suffered more instances of being attacked
17 with a caustic agent than in my original statement.

18 Q And that was made clear as a result of review-
19 ing the testimony and the video, correct?

20 A That is correct.

21 Q Some of which we just saw and the Court has
22 just observed, correct?

23 A That is correct.

24 Q How well do you see without your glasses?
25

1 A I would say my vision is about 20/60, so I can
2 see up close really well, but further than that things get
3 a little blurry. So like if I take it off right now I can
4 see you. I can see the judge all right, but I can't see
5 what's going on in the gallery.

6 Q Fair to say if it were dark and there was a
7 lot of chaos going on it would be difficult to identify
8 everything that's going on, everything happening?

9 A Yes, that would definitely be the case.

10 Q And you testified earlier that you suffered
11 after the first deployment toward Mr. beanie man, at Mr.
12 beanie man?

13 MR. WOODARD: Objection, asked and answered.

14 THE COURT: That has been asked and answered.
15 Sustain the objection.

16 Q Okay, withdrawn. Did you see any counter pro-
17 testors deploying?

18 A I did not see any counter protestors---

19 MR. WOODARD: Objection, Your Honor. Just be-
20 cause he didn't see it doesn't mean it isn't happening. He
21 probably (unintelligible) flying by either.

22 THE COURT: Just as far as he knows. I'll allow
23 it. What he observed. You can answer.

24 A Oh. I did not see any counter protestors use
25 any caustic agent or use any type of weapon.

1 Q Did you see how Mr. beanie man was affected?

2 A Yes, I did.

3 Q And---

4 A Mr. beanie man, he was immediately blinded.

5 MR. WOODARD: Objection. He can't tell whether
6 or not beanie man was blinded.

7 A His eyes---

8 THE COURT: Just testify as to what you observed.

9 A I observed his eyes being shut.

10 MR. WOODARD: Objection, Your Honor. He just
11 testified that if it's dark and it's chaotic and he's got
12 20/60 vision now he can see eyelids position?

13 THE COURT: You can cross him on it.

14 MR. WOODARD: Yes, sir.

15 THE COURT: What did you observe with regard to
16 beanie man?

17 A I observed his eyes being close, his face be-
18 ing red, retreating, falling back and yelling in pain.

19 THE COURT: All right. Mr. Tracci?

20 Q And I just want to make this clear, not at the
21 expense of being repetitive, but is it true to say, is it
22 accurate to say that you suffered the result of a caustic
23 substance on multiple occasions that night?

24

25

1 MR. WOODARD: Objection, Your Honor. This is not
2 Mr. Cantwell spraying it. The evidence is already that he
3 got sprayed by dragon arm, too.

4 THE COURT: What you're asking if for him to sum-
5 marize, is that---

6 Q Yes, sir.

7 THE COURT: All right, so I sustain the objection.
8 Do you have a specific question?

9 Q You were sprayed by Mr. dragon arm, correct?

10 A That is correct.

11 Q You were also the recipient of secondary caus-
12 tic substance deployed at Mr. beanie man, correct?

13 THE COURT: I'll allow that.

14 MR. WOODARD: Objection. He's already testified
15 to all this.

16 A That is correct.

17 Q And then there was a second deployment immedi-
18 ately after the first deployment which you also testified
19 ---that you testified to? How did that affect you?

20 A The second deployment also affected me in a
21 very similar way.

22 Q Those are my questions, Judge.

23 MR. WOODARD: Your Honor, can we have a break be-
24 fore we do this?

25 THE COURT: Yes, sir. How long a break.

1 MR. WOODARD: It's up to, Your Honor. I wouldn't
2 suggest a lunch break, but I would suggest a little lawyers'
3 break.

4 THE COURT: The lawyer's break would be much
5 shorter I assume.

6 MR. WOODARD: Yes, sir.

7 THE COURT: I think we have a lot to do so I
8 think we need to---

9 MR. WOODARD: I agree, Your Honor.

10 THE COURT: Perhaps if you want to take just a
11 few minutes to accommodate that issue.

12 MR. WOODARD: Can we say ten minutes?

13 (Discussion about lawyer's break.)

14 THE COURT: All right, Mr. Woodard, we'll be back
15 in ten minutes. All right, court will be in recess for ap-
16 proximately ten minutes.

17

18 (OFF THE RECORD.)

19

20 THE COURT: All right, we're back in session. Mr.
21 Woodard, you have some questions for Mr. Goad?

22 MR. WOODARD: I do have a few, Judge.

23 THE COURT: All right.

24 MR. WOODARD: We don't need to look at the screen
25 right now because I'm going to do it from over here.

1 THE COURT: All right.

2 MR. WOODARD: We'll get to the screen soon enough.

3

4 CROSS-EXAMINATION

5 By: Mr. Woodard

6 Q Mr. Goad, you swore under oath earlier that
7 you wanted to go to a peaceful protest, correct?

8 MR. TRACCI: We don't have the defendant.

9 Q Oh, I withdraw that question. They took him
10 downstairs, Judge.

11 (Pause.)

12 THE COURT: All right.

13 Q Mr. Goad, you said you went to the monument to
14 engage in a peaceful protest, correct?

15 A That is correct.

16 Q But when the fights broke out you didn't leave,
17 did you?

18 A I did not have an option to leave.

19 Q You didn't?

20 A No, I was completely surrounded by three hun-
21 dred (300) people.

22 Q Did anybody tell you, you couldn't leave?

23 A They were physically forming a wall, I could
24 not leave.

25 Q Nobody told you, you couldn't leave, did they?

1 A No.

2 Q You didn't attempt to walk through them, did
3 you?

4 A Yes, I did attempt to move around.

5 Q Immediately after the fighting in front of you
6 broke out?

7 A I didn't see where else I could go.

8 Q You didn't walk by the camera did you? Did
9 you? You didn't walk out alongside the camera, did you?

10 A Can you rephrase that, please?

11 Q You didn't try to leave when the fighting
12 broke out by walking by the camera that unicorn riot was
13 using, did you?

14 A Did I immediately turn around? No, I did not
15 immediately turn around and run.

16 Q And you didn't try to leave either. You
17 stayed right there, didn't you?

18 A My first priority was my own safety before
19 trying to escape.

20 Q Did you or did you not stay right there?

21 A I was moving around.

22 Q Now, you swore under oath just now you stood
23 back to back at the statue with others, right?

24 A That is correct.

25

1 Q But you didn't stand back to back the whole
2 time, did you?

3 A Did I literally stand my back to the statue?

4 Q I'm asking you, Mr. Goad. You said you stood
5 back to the statue with others. And I'm asking you if you
6 stayed there the whole time or if you moved with your back
7 off the statue. You're the one who used the term.

8 MR. TRACCI: I think, Your Honor, it's badgering
9 the witness. The witness has testified that he had moved
10 around and that his back had been up. They're not mutually
11 exclusive points to be in the course of an entire evening.

12 Q Withdrawn.

13 THE COURT: Okay, question withdrawn. What's the
14 next question?

15 Q And your sworn testimony is you didn't throw
16 any punches, right?

17 A That is correct.

18 Q Is your sworn testimony you didn't throw any
19 kicks?

20 A I did not kick anybody, no.

21 Q Is your sworn testimony that you didn't charge
22 forward at the---you were a counter, right? He's a coun-
23 ter---yeah, at the protestors?

24 A That is correct, I did not kick somebody.
25

1 Q You stood there without any aggressive action
2 whatsoever, isn't that right? That's your testimony,
3 right?

4 A In regards to your client.

5 Q No, any action whatsoever. The question is
6 any aggressive action whatsoever, yes or no.

7 A I do not---

8 MR. TRACCI: I would like to ask the relevance of
9 that question, Your Honor. I think we're talking about his
10 position with respect to the defendant in this case. And
11 he also testified earlier, and it's been asked and answered,
12 that he was not engaged in aggressive behavior including
13 aggressive kicking or punching.

14 THE COURT: I'll allow the question, go ahead.

15 Q No aggressive behavior toward anyone, right?
16 That's your sworn testimony.

17 A That is correct.

18 Q Now, after the event you learned of the exist-
19 ence of video, correct?

20 A That is correct.

21 Q Is the video here, one of them that you re-
22 viewed? The one you just looked at?

23 A That is correct.

24 Q Was that one of the videos you learned about?

25 A That is correct.

1 Q Where in that video does it identify they guy
2 with the radical agenda shirt as Christopher Cantwell?

3 A Where in the video?

4 Q Yeah?

5 A Throughout the video, it's clearly him.

6 Q No, where does it identify that it's Chris
7 Cantwell? Does he have a sign over his head? Is it tat-
8 tooed on his face?

9 A I can look at his face.

10 Q But it doesn't show, it doesn't identify his
11 name in the video correct?

12 A No, it doesn't. No video ever does that.

13 Q Well, so your answer is no, it does not iden-
14 tify Chris Cantwell in the video, right?

15 A Right.

16 Q Okay. You learned, you learned of somebody
17 who sprayed afterwards, isn't that right?

18 A That is correct.

19 Q And coincidentally that was from Emily Gorcen-
20 ski, correct?

21 A That was from a lot of people and not just
22 Emily Gorcenski.

23 Q You previously testified that it was from Emi-
24 ly Gorcenski and other people.

25

1 MR. TRACCI: Mischaracterizing the response, Your
2 Honor. I think the witness testified that he learned of
3 the identity of Mr. Cantwell from Ms. Gorcenski but he also
4 learned about it after reviewing video of those events.

5 Q And one of them was---

6 THE COURT: Mr. Goad can---if you disagree with
7 what's being asked, then you can state that.

8 A I disagree with that. Emily Gorcenski was not
9 the first person to tell me that it was Christopher Cant-
10 well.

11 Q Okay, but she did tell you at some point.

12 A That is correct.

13 Q Did she tell you that she also had accused Mr.
14 Cantwell?

15 A Um---

16 Q She did, didn't she?

17 A I believe at the time she did.

18 Q And that prompted you, it was Emily's identi-
19 fication that prompted you on August 17th to go down to the
20 magistrate and swear out a warrant, correct?

21 A No.

22 Q Now, I'm showing you the criminal complaint.
23 Is that B? Yeah. I'm referring you to a copy of Exhibit B
24 and Mr. Tracci gave you. So you went down and swore out a
25 complaint and swore under oath that Cantwell used a mace

1 pepper spray at my face and caused me to lose my vision
2 temporarily. Is that what you swore under oath back then?

3 A That is what I swore.

4 Q You didn't say anything about Cantwell sprayed
5 beanie man next to me, correct?

6 A I did not put that in that document.

7 Q You didn't say anything about Cantwell sprayed
8 up in the air and it affected me, correct?

9 A I did not put that in the document.

10 Q The only thing you put in the document was
11 used gel mace pepper spray, right?

12 A That is correct.

13 Q So when you took this out you didn't give a
14 darn about anything but gel mace pepper spray, isn't that
15 right? The other two weren't worth your time, right?

16 A No, that is not correct. I was answering it
17 on the best of my ability at the time.

18 Q Well, you took out this charge just for gel
19 mace pepper spray and what about the other two? Did you
20 care about those? Weren't they worth filling out a crimi-
21 nal complaint? No, correct?

22 A No.

23 Q Now.

24 A No, as in I don't agree with your statement.
25

1 THE COURT: Mr. Goad has got to answer the ques-
2 tion.

3 Q Okay.

4 A I filled out a criminal complaint on what I
5 had the best knowledge of at that time.

6 Q But you were there, you had knowledge of the
7 beanie man spray and the up in the air spray, correct, when
8 you filled this out? Correct?

9 A I had knowledge of that but that person is re-
10 sponsible---

11 Q But yet you didn't---

12 A Let me finish my question please. That person
13 is responsible for filling out their own crime reports. I
14 cannot fill out their crime reports.

15 Q You just testified you got affected by the
16 over two sprays. You're the person who is supposed to fill
17 out the crime report, Mr. Goad, and you didn't do it. You
18 only filled out the gel mace spray.

19 THE COURT: Just ask---ask him a question.

20 Q Isn't that right?

21 A I filled out a crime report involving being
22 affected by gel mace spray.

23 Q And no other sprays, correct?

24 A At the time, yeah.

25

1 Q Now, a week ago you met with someone and de-
2 termined that gel mace spray wasn't Mr. Cantwell, correct?

3 A If we're talking about the additional deploy-
4 ments later then yes, I found out that that was not Mr.
5 Cantwell.

6 Q So the gel mace spray, you found out the gel
7 mace spray guy was dragon arm, correct?

8 A That is correct.

9 Q Did you contact the police to correct your er-
10 roneous sworn statement?

11 A I have been in contact with---

12 Q Did you do it to correct this sworn statement
13 that was no longer true?

14 A I don't know how to change a sworn statement
15 that has already been issued.

16 Q Do you know how to call the police?

17 A Yes. I've been talking to---

18 Q Okay. And Mr. Tracci knew this thing was no
19 longer true. Did you insist that he should file something
20 with the Court to bring to attention that your sworn state-
21 ment was no longer true?

22 MR. TRACCI: Your Honor, that's not---

23 THE COURT: Is there an objection? Is there an
24 objection?
25

1 MR. TRACCI: It is, Your Honor. I don't see how
2 Mr. Goad's interest in disclosing something to the Court is
3 relevant. I disclosed it to the Court in time for today's
4 hearing after I learned that the identity of the person who
5 sprayed him, Mr. dragon man, whoever he was, was not the
6 defendant in this case. We've already heard testimony as
7 to how he was affected by multiple other additional deploy-
8 ments by Mr. Cantwell including the one and two beanie man
9 deployments.

10 THE COURT: The question is whether or not Mr.
11 Goad asked the Commonwealth's office to do anything else.

12 Q I'll withdraw the question.

13 THE COURT: All right, what's the next question?

14 Q So let me get this straight. From August 17th
15 until let's say November 1st, you were perfectly happy to
16 live in the ignorance of the truth, correct?

17 MR. TRACCI: Your Honor, I think that's---

18 Q I'll withdraw the question. Now, let me, let
19 me change it a little bit. From August 17th to November 1st
20 or so when you told Mr. Tracci, you never went back and
21 took out any other charges for any other deployments, cor-
22 rect?

23 A I've been in contact with local police in try-
24 ing to get warrants. I do not live in the city, so it is
25 difficult for me to come down here and swear out warrants.

1 Q Well, you managed to swear this one out,
2 right? But for two months you didn't come down here to
3 swear out any warrants against the other---about the other
4 two deployments, did you?

5 A Because I couldn't find the identities of the
6 people.

7 Q They were Chris Cantwell.

8 A Of the other deployments?

9 Q No, the other two that you're now complaining
10 about today, the one at beanie man and the one up in the
11 air. You never took out any warrants against that, right?
12 You didn't take out any warrants for two months, did you?

13 A I thought there was one out. I don't know ex-
14 actly how the warrant system works.

15 Q This one says gel spray. Well, you sure fig-
16 ured it out to take this one out, didn't you? But now af-
17 ter you filled out a warrant and put a man in jail, you
18 can't figure out how the warrant system works.

19 THE COURT: What's your question?

20 Q Is that right?

21 A I don't know---to best answer your question is
22 I don't know how to revise a warrant.

23 Q You could have come down and taken out another
24 one based on he shot beanie man, but you didn't do that,
25 correct?

1 A This is the first time this idea has ever been
2 thrown to me.

3 Q You just forgot how to take out a warrant af-
4 ter having taken this one out, is that right?

5 MR. TRACCI: Your Honor, I think that question
6 has been asked about four or five times.

7 Q I'll withdraw it. Okay. Okay, let's---I'm
8 going to turn on the unicorn riot video here. This is
9 probably a dumb question, but the way we are packed in here,
10 do you all have a pointer of any sort or a stick perhaps.
11 (unintelligible)

12 THE COURT: How about this?

13 Q I've got one of those, appreciate it.

14 THE COURT: We're fresh out of sticks.

15 Q Let's roll that video.

16 THE COURT: Mr. Goad, can you see that?

17 A Yes, I can see this.

18 THE COURT: Mr. Cantwell---

19 MR. CANTWELL: Yes, I can see it.

20 Q You've heard the sound already. Do you want
21 to hear it again? It's not going to be that great. It's
22 not that important.

23 THE COURT: It's your evidence.

24

25

1 Q All right, bump it forward just a hair. No, a
2 little more. A little more. Now, you saw that. You saw
3 those people doing that, correct, Mr. Goad?

4 A I don't think I saw that.

5 Q Never saw that? You reviewed the video,
6 right?

7 A That---

8 MR. TRACCI: Your Honor, at this point I'm going
9 to object. The purpose of today's hearing is a preliminary
10 hearing. The Commonwealth has an obligation to put on evi-
11 dence to show that there is probable cause that a crime has
12 been committed and by the defendant. I think we've met
13 this burden. At this point this is becoming a fishing ex-
14 pedition.

15 Q Certainly not. I have a right to cross-
16 examine him.

17 THE COURT: You can object to any question, but
18 he's got a right to cross-examine the witness.

19 Q Move it forward. Move it forward. Keep going.
20 Keep going. Keep going. Little more. Little more. Lit-
21 tle more. Little more. Little more. Little more. Little
22 more. Little more. Now, Mr. Goad, you saw this fighting,
23 didn't you?

24 A In this video or in person?

25 Q In person.

1 A I did not see this in person.

2 Q You didn't?

3 A No.

4 Q Okay. Jump a little forward, jump forward,
5 jump forward, jump forward, hold.

6 A I see myself in the top left corner, but we're
7 looking at this on a freeze frame right now.

8 Q Mr. Goad, you just swore under oath you didn't
9 see this fighting, but that's you right there, isn't it?

10 A That is me.

11 Q And that's the bald guy fighting, isn't it?
12 Isn't it? You've got to answer out loud.

13 A I do see myself right there in the top right
14 corner and I do see that bald man fighting.

15 Q And you've got your glasses on, don't you?

16 A I do have my glasses on.

17 Q All right, bump it forward, bump it forward,
18 bump it forward, bump it forward, bump it forward, keep go-
19 ing, keep going. And you touch your glasses there, cor-
20 rect?

21 A I touch my glasses.

22 Q Bump forward. Now, who is that right there?

23 A I cannot tell with this resolution.

24 Q That looks like beanie man, doesn't it?

25 A It could be.

1 Q Okay, and that right there is bald guy, right?
2 Bald guy in the wife beater tee shirt?

3 A Yes.

4 Q Looks like bald guy has just dropped beanie
5 man, hasn't he?

6 A Are you suggesting that the bald guy put down
7 beanie man physically?

8 Q I'm asking you. Is that what you saw?

9 A I mean, that's what that video would suggest.

10 Q Is that what you saw?

11 MR. TRACCI: Your Honor, I think the witness has
12 testified to the fact that there was a lot going on and
13 this evidence speaks for itself.

14 Q And he can testify to it.

15 A Yeah, this is at zero seconds. This video---

16 THE COURT: Wait a minute. I've got to rule on
17 the objection.

18 A I'm sorry, sir.

19 THE COURT: All right. Mr. Woodard is asking you
20 did you see what is recorded on that frame?

21 A This video has elapsed less than one second at
22 this point. I had not seen this.

23 THE COURT: All right. What's your next ques-
24 tion?

25 Q Okay. So that's you right there, right?

1 A That is correct.

2 Q And your sworn testimony today is that you did
3 not see that back on August 11th, correct?

4 A We're talking about this less than one second
5 that it happened and---

6 Q Is your answer yes or no?

7 A No, I don't, I---

8 Q Okay, bump it forward. Didn't see that either,
9 huh? That's still you, right?

10 A That's me right there.

11 Q And you're looking right at it as it appears
12 in the video.

13 A I don't know where my eyes are focused at. I
14 could be looking at my glasses as I'm taking them off.

15 Q Well, your head it turned there, right?

16 A I mean, my head is facing that direction, but
17 we can't see my eyes.

18 MR. TRACCI: Your Honor, if the witness could an-
19 swer the question.

20 Q Yes, sir.

21 THE COURT: Let him answer.

22 Q Yes, sir. Bump it forward, bump it forward,
23 bump it forward. And your glasses, you just said you were
24 taking your glasses off, but they're still on your nose,
25 aren't they?

1 MR. TRACCI: Objection, Your Honor. I think the
2 witness said that he thinks he might have been taking his
3 glasses, not that he had taken them off.

4 Q I'm not sure what he said.

5 THE COURT: Is the question are his glasses on
6 there?

7 Q The glasses, the glasses are on your nose
8 aren't they in that frame?

9 A Yeah.

10 Q So, in the earlier frame you weren't taking
11 your glasses off at all, were you?

12 A I could have been doing this.

13 Q Is the answer yes or no?

14 A Is the answer---were my glasses off a split
15 second later? Then no, my glasses are still on a split
16 second later.

17 Q Move forward, bump it forward. Now, that's
18 beanie man, isn't it?

19 A That is probably beanie man with this resolu-
20 tion.

21 Q Bump it forward, move it forward. Now, how
22 many feet would you reckon there are between beanie man and
23 these guys over here?

24 A At this moment?

25 Q Uh-huh (indicating yes).

1 A I would say that while beanie man is on the
2 ground they are about two feet apart.

3 Q Two feet, could it be four feet?

4 A I don't know.

5 Q How about we compromise on three?

6 A Why don't we just let the video speak for it-
7 self.

8 Q Okay.

9 THE COURT: Can you estimate from being there
10 what the distance is between beanie man and the crowd? If
11 you can't, you can't.

12 A Yeah, I would say, I mean, there's a buffer of
13 space of a few feet, but I can't be exact.

14 THE COURT: All right, what's your next question.

15 Q Okay. Could you back it up just a bump? And
16 just let it roll forward. Keep going. No, just let it
17 roll. Stop. Okay, all right. Is that---that's you in
18 that frame, right?

19 A That is me in the frame.

20 Q And beanie man is getting back up, right?

21 A Yes.

22 Q And right there in front of your hand, his
23 hand is in a fist, isn't it?

24 A No.

25 Q And he's not retreating, is he?

1 A His hand is not in a fist. His hand is in a
2 blur.

3 Q Okay, but he's not retreating like you said,
4 is he?

5 A Uh---

6 Q He's standing there---

7 A He's getting up, but he's backing up from
8 where his butt was planted when he was down.

9 Q Let's back it up a little bit more. Now roll
10 it forward from there. Just let it roll. Stop it there
11 and so that forward movement of his is in your estimation
12 is him actually retreating?

13 A What?

14 Q Is that right? Back it up a little bit.
15 Beanie man pops up. Beanie man chooses a stance, right?
16 And then Cantwell sprays beanie man, right?

17 A No.

18 Q Cantwell didn't spray beanie man?

19 A No, your whole statement is not true.

20 Q My statement was, my question is, Cantwell,
21 did Cantwell spray beanie man?

22 A To that question yes, Cantwell sprayed him.

23 Q And, all right, bump forward. All right. And
24 that's where beanie man goes out of the frame, right?

25 A In this video, yeah.

1 Q That's your elbow, isn't it, right there?

2 A Yeah, it looks like a denim jacket.

3 Q And there's one of the protestors with his
4 hand up like that, right?

5 A Yeah. Very commonly during that night they
6 were giving a salute that was very similar to a Nazi salute
7 so---

8 Q Bump it forward, bump it forward, bump it for-
9 ward, bump it forward. And now, that is, that's your hand,
10 right? That's you, correct?

11 A That's my pointing at Mr. Cantwell identifying
12 him as a person with mace.

13 Q And you testified earlier that when beanie man
14 got sprayed you lost your vision.

15 A I was losing my vision.

16 Q Oh, now you were losing your vision. You tes-
17 tified earlier that you temporarily lost your vision, but
18 after you temporarily lost your vision you could identify
19 the guy with mace, correct?

20 A I was still able to keep my eyes open.

21 Q Enough to where you could still identify the
22 guy with mace, correct?

23 MR. TRACCI: Your Honor, respectfully counsel
24 is---

25

1 THE COURT: I've got to hear the objection, I've
2 got to hear the objection.

3 MR. TRACCI: Misrepresenting earlier testimony.
4 He indicated that he suffered from the recoil from the
5 first deployment and it started affecting his vision. He
6 did not testify that he immediately was blind. Stop mis-
7 representing his (unintelligible).

8 Q Okay.

9 THE COURT: Are you withdrawing the question or
10 not?

11 Q No.

12 A Then I would say at---

13 THE COURT: Mr. Goad, it's what you recall. If
14 someone asks you a question and the facts are different
15 than your recollection then you can respond in that way and
16 otherwise just answer the question.

17 Q Let it go forward. Stop there. Okay, and you
18 didn't actually feel anything from that. You saw the pep-
19 per spray and that's why you did it, because your vision
20 was so great, right? You didn't feel anything there, did
21 you?

22 MR. TRACCI: That question has been asked and an-
23 swered several times.

24 Q No, it hasn't.

25 THE COURT: I'll allow it.

1 Q You didn't feel anything. You recoiled be-
2 cause you saw the pepper spray deployed right?

3 A No, I felt it on my face.

4 Q Okay. Move forward. Go forward. Go forward.
5 Go forward. And that's you pointing at the guy with pepper
6 spray, right?

7 A Correct.

8 Q And now that pepper spray has been deployed,
9 you didn't try to get out of there then, did you? You
10 stayed right in the front line, didn't you?

11 A I don't see where I could have gone.

12 Q Now, well, this is on the video. Did you try
13 back then?

14 A I don't---I was completely surrounded, 360 de-
15 grees, hundreds of people. I did not try because I had no
16 way of trying.

17 Q You could have said excuse me, couldn't you?
18 Bump it forward. Bump it forward. Bump it forward.
19 You're still saying that man has mace, that man as mace,
20 right? Is that what you said on the video?

21 A That's what I'm saying.

22 Q Okay. Bump it forward. Bump it forward.
23 Bump it forward. Bump it forward. Bump it forward. And
24 then there's somebody on the ground there, isn't it? Right
25

1 there. Right? He's got a stripe going down the shoulder
2 of his arm?

3 A I can't tell in this resolution.

4 Q Okay. But that's still your hand still point-
5 ing despite your impaired vision, right?

6 A This is about one second elapsed time so, no.

7 Q That's your hand still pointing, right, yes,
8 or no.

9 A Yes, that it my hand pointing.

10 Q Okay. Bump it forward. Bump it forward.
11 Bump it forward. Bump it forward. Now, you're still
12 pointing, right? Bump it forward. Bump it forward. Now
13 ---bump it forward. Bump it forward. Now---

14 MR. TRACCI: Your Honor, at this point I'd just
15 inquire into relevance. The deployment has already taken
16 place.

17 Q Which one? He's now claiming there are three.
18 I can cross-examine him on all three.

19 MR. TRACCI: Okay.

20 THE COURT: I'll allow it. I'll allow it. Go
21 ahead.

22 Q So despite your impaired vision and you're not
23 retreating from the site right in front of you, you're
24 still there, right?
25

1 A Less, I would say about one second has passed
2 and I have not left the group of three hundred (300) people
3 surrounding me.

4 Q Okay. Bump it forward. Bump it forward.
5 Bump it forward. And now you're turning away, correct?

6 A Yes. About---

7 Q Bump it forward.

8 A Let me finish the answer. About one second---

9 Q Bump it forward.

10 A Let me finish the question you asked.

11 Q Well, go ahead. I don't have to wait for you.
12 Go ahead.

13 A You keep saying bump it forward while I'm
14 talking.

15 THE COURT: Mr. Goad, Mr. Goad---

16 A I'm sorry, sir.

17 THE COURT: If there's an objection, Mr. Tracci
18 is going to make it.

19 Q There is?

20 THE COURT: You just have to just answer the
21 question.

22 Q I didn't hear it.

23 THE COURT: Go ahead.

24 A As I was saying, about one second has passed
25 and now I'm retreating.

1 THE COURT: What's your next question?

2 Q Okay, now, you're up there in the upper right-
3 hand corner, right?

4 A I'm not in the upper---

5 Q I'm sorry, left-hand.

6 A That is correct.

7 Q And your glasses are still on your nose, cor-
8 rect?

9 A At this point yes, my glasses are on my face.

10 Q And your face is pointing that way, correct?

11 A Um---

12 Q It's pointing to the right of the frame.

13 A Yes.

14 Q And Mr. Cantwell is going towards the left of
15 the frame, correct?

16 A Um---

17 Q The perspective is a little off.

18 A Yes.

19 Q And let's count together. One, two, three,
20 four, he's four people away from you, right?

21 A All right.

22 Q And he's spraying up in the air, correct?

23 A All right.

24 Q Bump it forward. Then it comes down. That's
25 still you up here in the corner, right?

1 A That is correct.

2 Q Bump it forward. And Mr. Cantwell sprayed at
3 this point, right, the second deployment. He sprayed,
4 right?

5 A I'm not sure if this has happened in this vid-
6 eo yet, but---

7 Q Let's go back. Bump it forward. Bump it for-
8 ward. Bump it forward. Bump it forward. Bump it forward.

9 A All right.

10 Q Okay, he sprayed there, right?

11 A I think so. It's hard to tell in this resolu-
12 tion for this video.

13 Q Okay. And let's look at you. You're not wip-
14 ing our eyes, are you?

15 A Again, would you immediately wipe your eyes?

16 Q Are you or not wiping our eyes?

17 A I am not immediately wiping my eyes.

18 Q Okay. You're not wiping your nose.

19 A I never claimed I had a runny nose.

20 Q Well, you're not wiping your nose in that im-
21 age, are you?

22 A No, I'm not wiping my nose in that image.

23 Q You're not recoiling one bit, are you? You're
24 standing there like nothing has happened.

25 MR. TRACCI: If you can ask---

1 Q Are you standing there like nothing has hap-
2 pened?

3 MR. TRACCI: Judge, if the witness could be ac-
4 corded the courtesy of answering the questions presented by
5 counsel.

6 Q I'm sorry.

7 THE COURT: I think that's a matter of argument.

8 Q Okay.

9 THE COURT: The photo speaks for itself.

10 Q Yes, sir.

11 THE COURT: It's not touching his face at all.

12 Q Yes, sir. Bump it forward. Bump it forward.
13 Bump it forward. Bump it forward. Bump it forward. Bump
14 it forward. Bump it forward. Now---bump it forward. Bump
15 it forward. Bump. Bump. Bump. Now, this is you over
16 there, correct?

17 A That is correct.

18 Q And you are reacting to being sprayed by the
19 man with the dragon arm, correct?

20 A Yes. If I may make one verification. If you
21 see where my face it looking at, I'm looking in the direc-
22 tion of where Mr. Cantwell is while being sprayed.

23 Q Go back. Go back. Bump it forward. Now, Mr.
24 Cantwell is in there. Bump it forward. Bump it forward.
25 Bump it forward. Bump it forward. Keep going. And now Mr.

1 Cantwell disappears towards the monument, doesn't he? He's
2 no longer in the frame.

3 A In the video, but I was still able to see him.

4 Q Bump it forward. Bump it forward. Bump it
5 forward. Bump it forward. Bump it forward. And right
6 there you're crouched down, isn't that right? You're
7 crouched down in your fighting stance, aren't you?

8 A That's not a fighting stance.

9 Q Bump it forward. Bump it forward. You look
10 over there. Bump it forward.

11 A I can see Mr. Cantwell's center frame. I can
12 see Mr. Cantwell's center frame. I was looking at him at
13 the time. He had mace while someone else is macing me.
14 That led to the misidentification of the gel mace.

15 Q Mr. Cantwell is twenty (20) feet away from you
16 now, isn't he?

17 A I wouldn't say that's twenty (20) feet.

18 Q Ten feet?

19 A Again, these are very difficult, but twenty
20 (20) is a great distance.

21 Q And you're getting, you're getting---the gel
22 mace is coming from dragon arm, right?

23 A Yeah, I would say that----

24 Q Bump it forward. Bump it forward. Bump it
25 forward. Bump it forward. Bump it forward. Bump it for-

1 ward. Just hold it there for a second, Jeremy. Mr. Tracci
2 can I have the original of his statement of 8-17, time
3 10:40?

4 MR. TRACCI: Does the Court have a copy?

5 THE COURT: No.

6 Q And I don't.

7 MR. TRACCI: I've got one.

8 Q Your file has a copy.

9 THE COURT: Is there any objection to this?

10 MR. TRACCI: No, Your Honor.

11 THE COURT: We'll make a copy of it if you're go-
12 ing to ask him about it.

13 Q Your Honor, this is only the first page.

14 MR. TRACCI: It's been in the discovery file for
15 quite a bit.

16 Q I'm showing you a document dated 8-17 10:40.
17 Is that your---

18 THE COURT: I'm going to have the clerk make a
19 copy. Okay, let's do that.

20 Q Okay. I'm going to ask you to take a look at
21 this. Would you take a look at that document and tell me
22 if that's your signature on the bottom of this page?

23 A This is mine, yes.

24 Q And you gave this statement to Sergeant Acord?

25 A That is correct.

1 Q Did you tell him the truth?

2 A I told him to the best of my ability at the
3 time, yes.

4 Q Did you tell him the truth or not?

5 MR. TRACCI: Your Honor, that question has been
6 asked and answered several times.

7 Q And he keeps dodging it. He keeps saying to
8 the best of my knowledge, not yes or no. Do I need to ask
9 him if the sun came up? To the best of my knowledge.

10 THE COURT: Sustain the objection.

11 Q All right. Now, you told Sergeant Acord on 8-
12 17, I saw a person in a brown shirt get pepper sprayed by a
13 person I now know as Christopher Cantwell, isn't that
14 right?

15 A That is correct.

16 Q And you told him, I yelled this man has mace
17 and people started swinging torches at me.

18 A That is correct.

19 Q Then you say I dodged them, right?

20 A Yeah.

21 Q So, if you saw the people swinging torches at
22 you, your vision was okay, wasn't it?

23 A I mean, it's right in front of me.

24 Q Okay, and so---

25

1 A Again, these are things that happened within a
2 second of the deployment.

3 Q Your vision was okay, right? And then you
4 said I dodged them and removed my prescription glasses, is
5 that what you said?

6 THE COURT: You have to answer for the court re-
7 porter.

8 Q Is that a yes?

9 A I mean, you're holding it right now but I
10 would imagine that's what I wrote.

11 Q Yeah, you can look at it. It's your statement.

12 A Yeah, that's what I wrote.

13 Q Okay. So when I saw a canister of Citrella
14 (sic) on fire and tried to exhaustion the fire with my foot,
15 right? You can read along.

16 A Yeah.

17 Q So your vision was good enough for you to see
18 Citrella (sic).

19 A I believe I intended to write the word extin-
20 guish the fire with my foot.

21 Q Okay. But you could see it, right?

22 A I could see the flaming canister right in
23 front of me, yes.

24 Q But I failed to do so. I looked up and Cant-
25 well maced me.

1 A Yeah.

2 Q Isn't that what you wrote?

3 A That is what I wrote.

4 Q You wrote---

5 A That is not, that sentence is not true. He
6 did not mace me immediately after that time. He had maced
7 me earlier.

8 Q So you lied to Sergeant Acord.

9 A That is not a lie, sir.

10 MR. TRACCI: Your Honor---

11 Q Well, he says---

12 THE COURT: I think there's an objection.

13 MR. TRACCI: Your Honor, he's arguing. He's not
14 asking questions.

15 Q No, I'm not. Your Honor, the---

16 THE COURT: I'll allow that exchange. Go ahead.
17 What's your next question?

18 Q On this it says, well, let's go back to the
19 video. Bump it forward. Bump it forward. Bump it forward.
20 Now, you see a couple of citronellas on the ground, right?

21 A Yeah.

22 Q And who is this over here with the black shirt
23 and jeans with the radical agenda on his back?

24 A That would be Cantwell.

25

1 Q That's Cantwell. Bump it forward. Bump it
2 forward. Bump it forward. And that's Cantwell. He's over
3 on the other side of the monument now, right? Right?

4 A Yeah.

5 Q That's him right here, right?

6 A Yeah.

7 Q Okay, bump it forward. Bump it forward. Bump
8 it forward. Bump it forward. Bump it. Bump it. Bump it.
9 Bump it. Bump it. Bump it. Bump it. Bump it. Bump it.
10 And there you are over on the left side of the frame,
11 right?

12 A Yeah.

13 Q And you, with all this fighting and pepper
14 spraying going on, again, you didn't leave, did you?

15 A I had nowhere to go.

16 Q Bump it. Bump it. Bump it. And there's a
17 guy coming forward with a torch. Bump it. Right? Right?

18 A Correct.

19 Q And a citronella candle falls off the end of
20 the torch, correct?

21 A That is correct.

22 Q Bump it. Bump it. Bump it. Bump it. Bump
23 it. And a guy swung that torch at that unknown guy in the
24 picture, right?

25 A Correct.

1 Q Bump it. Bump it.

2 A Oh, there's another spray of mace at that mo-
3 ment. You can see that huge stream right there, but I'm
4 looking down.

5 THE COURT: Wait till there's a question.

6 Q Did you test that to see what that was?

7 A I didn't have that luxury of that video.

8 Q Couldn't that be smoke from the torches lying
9 on the ground or lying in the air?

10 A No, that is---

11 Q It's not possible that that's torch smoke?

12 A That is a stream, sir.

13 Q It's not possible that's a layer of it.

14 MR. TRACCI: Your Honor, he's going to testify as
15 to what he thinks it is based on the video.

16 Q All right.

17 THE COURT: Go ahead. What's your next question?

18 Q And you're looking down, right?

19 A Yeah.

20 Q And your glasses are still on your nose,
21 right?

22 A It looks like it, yeah.

23 Q Yeah.

24

25

1 A No, wait, no, they're not. It's in my hand.
2 That's why I'm making---my glasses are in my hand. That's
3 why I'm making---

4 Q Those glasses, those aren't glasses on your
5 nose?

6 A I can't tell in this resolution.

7 Q Bump it forward.

8 A Look at how my hand---

9 Q Bump it forward. Bump it forward. Bump it
10 forward. Chris Cantwell is right over here on the other
11 side of the monument now, isn't he?

12 A Yeah, that's what I'm been saying, that he
13 didn't get me in the last two deployments.

14 Q And you said, when I failed to do so---when
15 you failed to put the citronella candle out you looked up
16 and Cantwell maced me, isn't that right? That's what
17 you told---

18 A That's what I wrote.

19 Q So your testimony is Cantwell maced you after
20 the citronella candle from the other side of the monument,
21 right?

22 A When it was really before when I did not re-
23 member that because I did not have---

24 Q So this is another----

25 A Please let me finish, sir.

1 Q Another false statement.

2 A I did not have the luxury of this video when I
3 filled that form out. If I had the luxury of this video I
4 would be able to correctly remember the sequence of events.
5 I put the sequence of events in wrong.

6 Q Go ahead. You testified earlier that before
7 you came down there to Charlottesville on August 17th you
8 knew it was Cantwell because you had reviewed all kinds of
9 video and all kinds of social media, correct?

10 A Yeah, but this video was not out.

11 Q Okay. Now this video wasn't out.

12 A I did not have access to that video on August
13 17th. Sergeant Acord asked to see this video or to see,
14 probably this video. I did not have that at the time and I
15 was able to later find this video.

16 Q No further questions. That's not correct.
17 Bump it forward. That was a tease. Bump it forward. Bump
18 it forward. Bump it forward. Keep rolling. Okay, freeze
19 it. A little more. A little more. Okay. Bump it forward.
20 Bump it forward. Now, isn't that Mr. Cantwell there?

21 A It appears. I can't make a positive---I can't
22 tell in this resolution.

23 Q Bump it forward. Bump it forward. Bump it
24 forward. Bump it forward. Bump it forward. Bump it for-
25 ward. Bump it forward. Bump it forward. Bump it forward.

1 Keep going. Keep going. Keep going. Stop. Now, there's
2 the guy in the white shirt swinging the torch, right?

3 A Yeah.

4 Q And Cantwell is on the other side of the monu-
5 ment, isn't it?

6 A Yeah. I think I told---

7 Q Stop. Now, who is this guy?

8 A Probably beanie man, pinned to the monument,
9 already been maced.

10 Q That's beanie man. Bump it forward. Bump it
11 forward. Bump it forward. Bump it forward. Bump it for-
12 ward. And he's fighting that guy isn't it?

13 A No.

14 Q Bump it forward.

15 A No. He's not fighting that guy.

16 Q Bump it forward.

17 A Let me finish the question. He's clearly like
18 walking away.

19 Q Bump it forward.

20 A Less than a second, three frames, he's walking
21 away. He's putting his hand up to walk away.

22 Q He's diving on Cantwell's back, isn't he?

23 A He was sprayed directly in the eye. I don't
24 even think he knows where he's going.

25

1 Q Well, he's up there on the monument. He made
2 it all the way to the other side of the monument, didn't
3 he? Blind?

4 A It doesn't immediately set in. He has a few
5 seconds.

6 Q Bump it forward. Bump it forward. Bump it
7 forward. Bump it. Bump it. Bump it. Oh, look, here's
8 beanie man right here---is that beanie man right there?

9 A I can't tell in this resolution. It looks
10 like---

11 Q Bump it forward.

12 A It looks like just a blur. It looks like
13 somebody is hitting him, too.

14 Q Move it back. There you go. Bump it forward.
15 Bump it forward. Bump it forward. Bump it forward. Bump
16 it forward. Little more. Little more. There you go,
17 isn't that beanie man? He's fighting Cantwell now, isn't
18 he?

19 A If we're talking about this is happening after
20 the deployment of mace, I don't see the relevance of---

21 Q Is your answer, yes?

22 THE COURT: You've got to answer the question.

23 A The answer is I cannot tell from this video.
24 The resolution it too low.

25 THE COURT: All right, that is your answer.

1 Q Bump it forward. Bump it forward. Bump it
2 forward. Bump it forward. Bump it forward. Bump it for-
3 ward.

4 A He's getting his in the face multiple times.

5 THE COURT: There's no question before you right
6 now.

7 Q Bump it forward. What does that look like?

8 A I don't even know whose arm that is.

9 Q Well, I didn't ask you whose arm it was. I
10 said what does it look like?

11 A Well, it could really be anything. In this
12 resolution it could be anything.

13 Q It looks like somebody with a can of mace,
14 doesn't it?

15 A Yeah, but we don't know whose body that is.

16 Q Bump it forward. Bump it forward. Bump it
17 forward. Bump it forward. Bump it forward. Bump it for-
18 ward. Bump it forward. Bump it forward. Bump it forward.
19 Almost getting to the end. Bump it forward. All right,
20 roll it forward. That's all my questions for Mr. Goad.

21 THE COURT: Any redirect?

22 MR. TRACCI: Yes, Your Honor, very briefly.

23

24 REDIRECT EXAMINATION

25 By: Mr. Tracci

1 Q Based off the video and your recollections,
2 you were sprayed by Mr. Cantwell with mace or a toxic sub-
3 stance.

4 MR. WOODARD: Objection, asked and answered again.

5 Q It's redirect, Your Honor.

6 THE COURT: I'll allow it. Go ahead.

7 Q By a caustic substance, is that true?

8 A Yes. I was hit in the face by Cantwell with a
9 caustic substance. I believe that video shows that and I
10 think we've reviewed that.

11 Q At least twice?

12 A Yeah.

13 Q Did it impair you, that caustic substance?

14 A It most certainly did.

15 Q And another way to identify Mr. Cantwell was
16 based on what, not only how he looked but was he wearing
17 something distinctive?

18 A Yes. He was wearing a black shirt that said
19 radical agenda. It had a helicopter on the back with a
20 person being thrown out of it.

21 Q And you were asked whether you had an oppor-
22 tunity to retreat, correct?

23 A Yes, I was asked that.

24 Q And there was some suggestion that you could
25 just say please move out of the way. Is that based on your

1 review of the video and your recollection of the events,
2 something that you reasonably could have done at the time.

3 A I could not have reasonably asked the people
4 who were actively fighting me please excuse me.

5 Q And we reviewed the deployments of mace, un-
6 contested at this point that it was Mr. Cantwell according
7 to his defense counsel. Did it look like he had an oppor-
8 tunity, anyone behind him when he decided to mace beanie
9 man?

10 A I'm sorry, can you repeat that?

11 Q Did he have someone behind him when he decided
12 to mace beanie man? Did he have---

13 A Yes.

14 Q Did he, in your view have an opportunity to
15 retreat at that point?

16 A Cantwell did have an opportunity to retreat,
17 yes.

18 MR. WOODARD: Objection, Your Honor. He can't
19 tell what Cantwell's opportunities were. He can ask him if
20 he did retreat or didn't.

21 THE COURT: Based on his observation. Go ahead.

22 A Yes, he had an opportunity to retreat. He did
23 not have people who were hostile behind him.

24

25

1 Q Did you have anywhere to go? Did you have an-
2 ywhere to walk back because you were against the statue at
3 that point?

4 A I had nowhere else to go except maybe another
5 part of the statue.

6 Q And we met several times ahead of today's pre-
7 liminary hearing.

8 A That is correct.

9 Q And each of those times I implored you that
10 the one rule was to be truthful at all stages, is that
11 true?

12 A That is what you told me.

13 Q And I told you that if there was information
14 that was relevant and needed to be disclosed it would be,
15 is that true?

16 A Yes, that is true.

17 MR. WOODARD: No, turn it back on Jeremy.

18 Q And you recently discovered that the identity
19 of Mr. Cantwell, as you identified him at the time, was
20 somebody else.

21 A I'm sorry, can you repeat that?

22 Q You took out a criminal complaint and signed a
23 statement on the 17th, correct?

24 A That is correct.

25

1 Q Based on your best understanding at the time,
2 who did you think had deployed that gel mace directly at
3 you?

4 A Based on my understanding at the time I
5 thought it was Cantwell.

6 Q And after you discovered that it was not you
7 told me.

8 A Yes, I did.

9 Q When we were viewing the testimony and prepar-
10 ing for today, is that correct?

11 A Yes. I don't remember what day, but I did
12 tell you that.

13 MR. WOODARD: I object, Your Honor. We've been
14 over this three times, too.

15 THE COURT: Yes. It has been covered.

16 Q And that has been disclosed as Mr., counsel
17 indicated. You also met with, and we will testify later if
18 necessary with Sergeant Acord with the police department?

19 A That is correct.

20 Q And you let him know as well that it was pos-
21 sible misidentification, is that true? I wasn't there at
22 every one of those early meetings.

23 A I believe this was at a meeting that we had
24 together when we first discovered it.

25

1 Q Okay. Okay. And based on your understanding
2 and review of testimony, of any evidence today, you have no
3 doubt in your mind that you were sprayed by Mr. Cantwell at
4 least twice.

5 A Yes.

6 Q And suffered the effects.

7 A Yes.

8 Q And you testified earlier as well, did you
9 identify other people suffering the effects? Were there
10 other people impaired by those deployments?

11 MR. WOODARD: Objection. He can't testify if
12 somebody else is impaired or suffering or what anybody is
13 doing.

14 THE COURT: He's already testified with regard to
15 it.

16 A I will say to the best---

17 THE COURT: No, sustain the objection. What's
18 your next question?

19 Q Did you notice other people---what did you ob-
20 serve in other people after those deployments? Counter
21 protestors.

22 MR. WOODARD: Objection. It's utterly irrelevant
23 what happened to other people. Were they dancing, were
24 they crying, who cares? The question is, did Mr. Cantwell
25 spray him without legal justification.

1 THE COURT: I assume that depends upon the Com-
2 monwealth's theory of the case.

3 Q Did you notice other people suffering similar
4 effects, eyes running, difficult breathing as you described
5 it?

6 A Yes, I did.

7 Q Suggesting impairment from the caustic sub-
8 stance.

9 A Yes, I did. I saw that.

10 Q Thank you.

11

12 RECROSS-EXAMINATION

13 By: Mr. Woodard

14 Q Open up the file on Goad's folder please. Now,
15 Mr. Goad, you testified you just couldn't retreat, right?

16 A Yes, I did.

17 Q And you testified you couldn't possibly ask
18 any of those people to let you through, right? Is that
19 right?

20 A I think it would be absurd to immediately ask
21 the people who are engaging in violence with me to excuse
22 me.

23 Q But you don't know because you didn't ask,
24 right?

25 A I---

1 Q All right, bump it forward. Bump it. Bump it.
2 Bump it. Bump it. Bump it. Bump it. Bump it.

3 MR. TRACCI: It's cumulative and repetitive at
4 this point. I think we've been through this video. Is
5 this a new video?

6 Q No, we haven't been through this video. Bump
7 it.

8 MR. CANTWELL: I can't see it.

9 Q Bump it. Bump it. Bump it. Bump it. Keep
10 going. Keep going. Stop it there. Isn't that you in the
11 jean jacket right there, Mr. Goad?

12 A Yeah, it is.

13 Q All right.

14 A I have no idea where this is on the timeline
15 of events, though.

16 Q Well, you were retreating, right? You had
17 gotten out, right?

18 A I can't---can I get more context from this
19 video? I haven't seen it all the way through.

20 Q This is the back of the monument isn't it?

21 A I don't know where the back is. I don't know
22 any points of reference on this video.

23 Q Let's stop here. Before you got sprayed were
24 you---did you do that or did you have praying mantis hands?

25

1 A I don't know what's going on in this video. I
2 have no frame of reference.

3 Q Bump it forward. Bump it forward. Keep going.
4 You're smiling there. You've got a big old grin on your
5 face don't you Mr. Goad?

6 A I smile a lot, sir.

7 Q Yes, sir. Bump it forward. Bump it forward.
8 Roll it back a little bit and turn on the sound. That's
9 you, see, yeah, you're rolling right through there smiling,
10 aren't you?

11 A I can't tell if I'm smiling in this video.

12 Q That's all the questions.

13 A How do you know I'm not murking in pain.

14 THE COURT: There's no question, no question.

15 A All right.

16 MR. TRACCI: Nothing further, Your Honor.

17 THE COURT: Mr. Goad, you said that there were
18 three deployments?

19 MR. WOODARD: One more question, Judge.

20 A There were four. There was the first one by
21 Cantwell, the second one by Cantwell, the third one was by
22 the individual with the dragon tattoo.

23 THE COURT: You said the last two deployments---

24 A What?
25

1 THE COURT: Mr. Cantwell---you said, Mr. Cantwell
2 did not get me with the last two deployments. Is that
3 right?

4 A Yes. The last two deployments were not by Mr.
5 Cantwell.

6 THE COURT: Mr. Tracci, go ahead.

7 A But I also want to specify that there was the
8 fourth deployment that was through the air that you may
9 have been able to see the stream of.

10 THE COURT: Mr. Tracci?

11 MR. WOODARD: Oh, so now there's a fourth one?

12

13 REDIRECT EXAMINATION

14 By: Mr. Tracci

15 Q For the sake of being repetitive, Your Honor,
16 just to clarify a point that's been (unintelligible). A
17 point that's been made clearly and more than once, you suf-
18 fered from multiple deployments that day, is that true?

19 MR. WOODARD: Objection, asked and answered for
20 the hundredth time.

21 Q I'm just clarifying the testimony.

22 THE COURT: He's been asked more than once.

23 Q At least two of those were directly from Mr.
24 Cantwell, is that correct?

25 A That is correct.

1 Q And you suffered consequences, you were im-
2 paired as a result.

3 A That is correct.

4 Q And that's your best understanding now based
5 on reviewing these videos for hundreds of times.

6 A That is correct.

7 MR. WOODARD: Do I get another crack? I'll make
8 it short.

9 THE COURT: Mr. Goad, you just testified that two
10 of the deployments were from Mr. Cantwell.

11 A That's correct.

12 THE COURT: Have you also made the statement that
13 you can no longer be certain that the direct deployment of
14 gel pepper spray came from Mr. Cantwell?

15 A If we're talking about dragon arm and the
16 fourth one from a person off camera, that was not by Mr.
17 Cantwell.

18 THE COURT: You're saying that your testimony
19 this morning is that Mr. Cantwell sprayed you twice.

20 A Yes.

21 THE COURT: Okay. And the email indicates that
22 you can no longer, you're no longer certain that the direct
23 deployment of gel pepper spray was from Mr. Cantwell.

24 A Yes.

25

1 THE COURT: Are those two statements incon-
2 sistent?

3 A No. I feel that the first two deployments
4 were the ones that were crucial in affecting me, that the
5 subsequent ones also affected me but I was already under
6 the influence of the toxification on my face.

7 THE COURT: All right. Go ahead.

8

9 REDIRECT EXAMINATION

10 By: Mr. Tracci

11 Q You subsequently identified dragon arm as
12 someone not to be Mr. Cantwell, correct?

13 A That's correct.

14 Q But prior to that deployment you observed in
15 the video Mr. Cantwell deploying mace at beanie man on the
16 first occasion, correct?

17 A That is correct.

18 Q And after that deployment you recoiled and
19 testified that you suffered as a result of that first de-
20 ployment.

21 A That is correct.

22 Q And then a short time afterwards, literally
23 two seconds later we reviewed evidence video and photo-
24 graphs, screen shots of him deploying indiscriminately sort
25

1 of shooting above the crowd and you testified that you suf-
2 fered as a result of that deployment as well.

3 A That is correct.

4 MR. WOODARD: Your Honor, we're going over it all
5 again.

6 Q Is that true?

7 MR. WOODARD: I do have a question.

8 A Yes.

9 THE COURT: What's your question?
10

11 RE CROSS-EXAMINATION

12 By: Mr. Woodard

13 Q Mr. Goad, now there are four pepper spray in-
14 cidents with you, right?

15 A Yeah, you saw the video.

16 Q And two of those you didn't care about until
17 you talked to the Commonwealth's Attorney a week ago,
18 right? Didn't take out any warrants on those, right?

19 A Didn't know they existed.

20 Q You didn't, now you didn't know you got pepper
21 sprayed four times?

22 A No, uh---

23 Q Okay, now you didn't take a warrant---

24 A Let me finish, let me finish the question.

25 Q Go ahead. Go ahead.

1 A I was, I was in the room with Mr. Tracci when
2 I found out that I had been hit multiple times.

3 Q And you were in the room, you were in the room
4 when Mr. Tracci said it wasn't Cantwell spraying you with
5 the gel, it was Cantwell spraying you these two other times,
6 isn't that right?

7 MR. TRACCI: That's inaccurate, Your Honor. He's
8 misrepresenting---

9 Q I'm asking him the question. If he wants to
10 testify to what happened I'll call him as a witness.

11 THE COURT: Mr. Woodard is correct.

12 Q Isn't that right?

13 A No, that is a gross mischaracter---

14 Q Mr. Tracci is the one who told you you were
15 affected by the other two deployments, isn't that right?

16 A No. I can look at the video. I can see my
17 face go ah---

18 Q Now what about the fourth deployment?

19 A The fourth deployment, the stream that I---

20 Q You didn't take a warrant out about the fourth
21 deployment either, correct?

22 A You can't even see---

23 Q Correct?

24 A You can't even see the person who it is. How
25 am I supposed to say it, unknown person?

1 Q Well, why did you say it was Chris Cantwell?
2 He did it two other times.

3 THE COURT: That's a matter of argument.

4 Q No further questions.

5 THE COURT: All right. Mr. Tracci, anything
6 else?

7 MR. TRACCI: No, sir.

8 THE COURT: Mr. Goad, you're free to go. Thank
9 you.

10 A Thank you very much, Your Honor.

11 THE COURT: All right, who is the Commonwealth's
12 next witness?

13 MR. WOODARD: Can I meet with the Commonwealth's
14 Attorney for just a second?

15 THE COURT: That's up to you-all if you want to
16 meet.

17 (Attorneys confer.)

18 MR. WOODARD: Your Honor, before he calls, before
19 he calls his next witness can we take a, if we're in for
20 another two hours. Can we take another break? I don't re-
21 ally need one but---

22 THE COURT: How long a break?

23 MR. WOODARD: Fifteen (15) minutes.

24 THE COURT: Fine, sure.
25

1 MR. WOODARD: I hate to delay things, but we've
2 been going for what---

3 THE COURT: Somebody might disagree that we're
4 all delaying things.

5 MR. WOODARD: Okay, well, I'd---

6 THE COURT: Important issue. If you need a break,
7 that's fine. Otherwise---you need a fifteen (15) minute
8 break?

9 MR. WOODARD: Yeah.

10 THE COURT: That's fine.

11 MR. WOODARD: Do you want a fifteen (15) minute
12 break?

13 MR. TRACCI: I'll defer to you.

14 THE COURT: All right. We'll be in recess fif-
15 teen (15) minutes.

16

17 (OFF THE RECORD.)

18

19

20 THE COURT: All right, Mr. Tracci, who is your
21 witness, next witness.

22 MR. TRACCI: Ms. Gorcenski.

23 THE COURT: Ms. Gorcenski, you've been sworn?

24 MS. GORCENSKI: Yes.

25 THE COURT: All right. Mr. Tracci

EMILY GORCENSKI, having been duly sworn testified
as follows:

DIRECT EXAMINATION

By: Mr. Tracci

Q Good afternoon. Can you identify yourself to the Court and spell your name for the court reporter, please?

A It's Emily Florence Gorcenski. Last name is
G-o-r-c-e-n-s-k-i.

Q And were you involved or did you go to the University of Virginia on August 11th 2017?

A Yes, I did.

Q What did you go for? What was the purpose of your visit there?

A I went to observe and to film and broadcast
the torch lit march that was to happen that night.

Q Is that in Albemarle County to the best of
your knowledge?

A Yes.

Q And how did you learn of the event?

A I first learned about it when it was advertised in a post on the Daily Stormer a few days prior.

Q And did you go alone?

1 A I went to the University alone. While I was
2 there I bumped into a couple of people that I knew.

3 Q Did you have any weapons with you?

4 A No. I was unarmed.

5 Q You had your camera? You were there to video
6 record?

7 A Yeah, my phone, camera phone.

8 Q And you proceeded to the Jefferson statue?

9 A I first went to the Jefferson statue and the
10 rotunda and I went to the lawn and to the amphitheater so
11 see if anyone was gathering.

12 Q And can you describe the size of the respec-
13 tive parties, the protesters and counter protesters?

14 A Yes. Once I got to a Nameless Field, I ini-
15 tially saw I'd say between twenty (20) and forty (40) peo-
16 ple gathering and then over the next I'd say fifteen (15)
17 to twenty (20) minutes it became quickly apparent that
18 there were hundreds, probably over three hundred (300) peo-
19 ple.

20 Q Were they shouting at you?

21 A At that point, no. They were assembling for
22 their torch lit march. They were handing out torches.
23 They were milling about in groups, giving out security as-
24 signments, that sort of thing.

25 Q What happened then? What happened next?

1 A As they started lighting the torches I was
2 filming the size of the procession and walking down. Some
3 people started harassing me for my gender and at one point
4 I saw Mr. Cantwell and I asked him how his Walmart meet up
5 went.

6 Q If I could take you one step back.

7 A Sure.

8 Q What were they saying about your gender?

9 MR. WOODARD: Objection, Your Honor, it's irrele-
10 vant. The issue here is whether or not she was pepper
11 sprayed by Mr. Cantwell, not what she, not whether she was
12 treated poorly by other people.

13 Q Your Honor, it goes to one of the elements of
14 the offense which is malice.

15 MR. WOODARD: Well, it's not his malice. I mean,
16 she's saying she was being abused by unknown people.

17 THE COURT: Again, it's some context that's rele-
18 vant. I'm not sure when this is in relationship to any
19 other allegation by the Commonwealth, but I'll allow it on
20 a limited basis. Go ahead.

21 A Can you repeat the question, please?

22 Q You indicated they were saying things to you,
23 inappropriate rude things about your gender. Can you be
24 more specific?

25 A Yes. They were using a number of slurs---

1 MR. WOODARD: Objection, Your Honor. They? Was
2 it Mr. Cantwell or not? He's not responsible for what oth-
3 er people say. And it's not---and he can't build malice
4 because of what somebody else said to this person.

5 THE COURT: If you want to lay a foundation in
6 regard to the presence or absence of Mr. Cantwell when
7 whatever was being said by unnamed people.

8 Q Did you interact with Mr. Cantwell?

9 A Yes.

10 Q What was the nature of that interaction?

11 A I asked him how the Walmart meet up went ear-
12 lier that day.

13 Q And what were you referring to?

14 A Earlier in the afternoon of August 11th Mr.
15 Cantwell had a meet up in the Walmart parking lot up on 29
16 North. I was present and observing from a distance and I
17 witnessed as police arrived on the scene and questioned Mr.
18 Cantwell.

19 Q How did you know it was Mr. Cantwell?

20 A I recognized him at first because he was
21 listed as a headliner for the Unite the Right Rally so I
22 had done my research as far as who the speakers were. And
23 when I was there, there was---happened to be an Albemarle
24 County Police officer who had parked next to me. He was
25 standing outside of his vehicle taking notes and I over-

1 heard on the radio that an ID check came back for Mr.
2 Christopher Cantwell of Keene, New Hampshire and I heard
3 this while I was watching two officers talk to him.

4 Q What did Mr. Cantwell say to you that night on
5 the 11th?

6 A He asked me if I was the person who called in
7 a false police report. I said that I wasn't. And he made
8 some comment like next time---I told him that I was late in
9 arriving to the Walmart parking lot, so it wasn't me who
10 called in the report. And he made a comment like don't
11 stay out late drinking next time.

12 Q How would you describe his demeanor toward you,
13 the way he treated you?

14 A Somewhat hostile.

15 Q Do you recognize Mr. Cantwell? Is he in the
16 court today?

17 A Yes.

18 Q Can you identify him?

19 A Yes, he's right there.

20 Q The record will reflect---what is he wearing?

21 THE COURT: Yes.

22 A He's wearing a gray and black striped jumpsuit.

23 Q Now, tell the Court what happened then? What
24 was going on when you were there? What did you see as
25 things developed?

1 A Sure. So as we were down on Nameless Field.
2 I watched as they passed out torches and lit torches and
3 began assembling in formation. Specific security assign-
4 ments were given out.

5 MR. WOODARD: Objection, Your Honor. I think
6 we've got plenty of context from Mr. Goad.

7 THE COURT: I'll allow it. Go ahead.

8 A Specific security assignments were given out.
9 I watched as Mr. Cantwell was given a security assignment.
10 As the march proceeded, I followed alongside the march
11 filming it, talking about what they were chanting, what
12 they were saying. And I followed the march up through UVA
13 up to the amphitheater. At that point I went, I didn't
14 follow along closely, I went an alternate route so I could
15 see it from a distance, and when they got the lawn I ran
16 ahead to get to the rotunda to see, to be in position for
17 when they got there to see what they would be doing once
18 they got to the rotunda.

19 Q And what were they doing when they got to the
20 rotunda.

21 A When I got to the rotunda I actually saw a
22 small group of counter protesters that I---surprised me. I
23 didn't---I wasn't aware of any counter demonstration that
24 had been planned when I was initially at the Jefferson
25 statue. There was nobody there to stage a counter demon-

1 stration. So when I saw the counter protesters there, I
2 wanted to make sure that I could film anything that was
3 happening and film whatever speeches or interactions might
4 take place. After a couple of minutes of being at the
5 statute, I saw the torch march come down. I was expecting
6 the headliners to come down and give some speeches. And
7 the first few waves of people did, in fact, come to the
8 bottom of the steps and then line up side by side. And
9 then the rest of the torch marchers proceeded to flood
10 around both sides and surround the counter protesters and
11 myself at the statue.

12 Q How many protesters would you estimate there
13 were?

14 A To be clear, are you referring to the torch
15 march or the counter demonstrators?

16 Q The protesters or the white suprem---you know,
17 the white nationalists.

18 MR. WOODARD: Objection, Your Honor. If he wants
19 to testify---

20 Q The people with the torches.

21 MR. WOODARD: He's been calling them, he's been
22 calling them the protesters and he can sit there and say
23 the guys with the torches.

24 Q I don't think Ms. Gorcenski had heard that de-
25 scription.

1 THE COURT: Just so Ms. Gorcenski knows how
2 they've been identified.

3 Q The protesters are the people we're here for,
4 Unite the Right, and the counter protesters were there to
5 counter protest the Unite the Right protesters.

6 A I would estimate that there were about three
7 hundred (300) to three hundred and fifty (350) protestors.

8 Q How many counter protesters?

9 A I would say less than forty (40). My estimate
10 is between two and three dozen.

11 Q And what was going on? What was the nature of
12 the interaction between---so that's a disparity approxi-
13 mately of ten to one?

14 A Yes, I'd say about ten to one.

15 MR. WOODARD: Objection, Your Honor. This is
16 getting pretty far afield.

17 THE COURT: What's the objection?

18 MR. WOODARD: The disparity between the two pro-
19 testers? What does it have to do with whether she got pep-
20 per sprayed by Mr. Cantwell.

21 THE COURT: Again, there has to be some con-
22 text---

23 MR. WOODARD: Yes, sir.

24 THE COURT: In regard to it. That's what the
25 Court is trying to find out. Go ahead, Mr. Tracci.

1 Q So that would be about a ten to one disparity,
2 is that correct?

3 A That's correct, yes.

4 Q What did you see? Did things at some point
5 start becoming violent or confrontational?

6 A The first thing I saw once I realized that we
7 were surrounded was that they started to encroach upon us.
8 There was a lot of shouting at the group of people that
9 were gathered around the statue, the counter protesters and
10 they started to encroach and encroach while shouting at us.
11 The counter protesters were chanting. They were chanting
12 some antiracist slogans.

13 MR. WOODARD: Objection. Whatever she is going
14 to say is hearsay and it's irrelevant.

15 THE COURT: I'll allow it. Go ahead.

16 A The counter protesters were chanting some an-
17 tiracist slogans and the protesters were shouting in our
18 faces. I was being specifically targeted with several---

19 MR. WOODARD: Objection to the hearsay and the
20 characterization of it.

21 THE COURT: I'll allow it, but if you're direct
22 her attention, Mr. Cantwell hasn't been mentioned. If we
23 could get there.

24 A There's a lot of---
25

1 THE COURT: Mr. Tracci is going to ask you another
2 question.

3 A Okay.

4 THE COURT: Go ahead.

5 Q So you noticed that there was some hostility
6 from the protesters.

7 A Yes.

8 Q We haven't gotten to Mr. Cantwell yet, but
9 you're on the receiving end of that.

10 A Yes.

11 Q As well as the counter protesters. And can
12 you describe some of those taunts or chants?

13 MR. WOODARD: Objection, Your Honor. It's calling
14 for more hearsay and this is more context. We still
15 haven't gotten to Mr. Cantwell.

16 THE COURT: The Court does have some context now,
17 I think.

18 Q At some point did violence take place?

19 A Yes. The first violent act that I noticed was
20 when I was shoved.

21 Q And what happened? Just for the benefit of
22 the Court. We're not talking about Mr. Cantwell here specifically.
23

24 MR. WOODARD: Then objection, Judge, it's irrelevant.
25 Let's get to Mr. Cantwell. If she had a bad time,

1 yeah, okay, fine. But we're not here about her experience
2 at the monument.

3 THE COURT: I understand your argument.

4 Q Sufficient context, Your Honor?

5 THE COURT: I do have context, yeah, go ahead.

6 Q Okay.

7 THE COURT: Go ahead, let's get to Mr. Cantwell.

8 Q Okay, so you're noticing that things are be-
9 coming violent at some point.

10 A Yes.

11 Q And you reviewed video of these events after-
12 wards.

13 A Yes.

14 Q Correct? And you are able to identify some of
15 the perpetrators of that violence afterwards, correct?

16 A Correct.

17 Q And we, the Court has already been provided
18 screen captures of several individuals including the person
19 known as beanie man.

20 A Okay.

21 Q Do you know Mr. beanie man?

22 A I met him the next day. I don't know his le-
23 gal name. I only know him through a nickname.

24 Q Through a nickname. Is it fair to say we
25 tried to encourage you to identify him?

1 A Yes, that is correct.

2 Q And bring him in to testify?

3 A That is correct.

4 Q After being there did you review video of what
5 happened to get a better sense of the identities of various
6 parties that evening?

7 A Yes, I did.

8 Q And the Court has reviewed the evidence and
9 has the video. Did you later identify someone either there
10 that night or through video as Mr. Cantwell?

11 A Yes, I did.

12 Q And how did you do that?

13 A The first image that I saw that would identify
14 Mr. Cantwell was as still photograph that was posted on so-
15 cial media that showed Mr. Cantwell spraying pepper spray
16 into the face of beanie man. I recognized Mr. Cantwell
17 from my earlier interactions during the day where I saw the
18 clothes that he was wearing. I recognized him from my re-
19 search into the Unite to Right. And I also recognized the
20 individuals in the photographs as being near me, right next
21 to me during that altercation.

22 Q And after reviewing the video and that deploy-
23 ment that you just described, did you have any kind of
24 physical reaction?

25 A Yes.

1 Q Can you describe that impairment to the Court?

2 MR. WOODARD: Objection, Your Honor. No, no nev-
3 er mind. I withdraw it.

4 Q Please describe that.

5 A Yes. So after the incident shown in the photo
6 and the video. I recall having a burning sensation in my
7 face and my eyes and my nose and my eyes started to water
8 and I started to lose my vision.

9 Q Is it fair to say that there was some chaos
10 and you couldn't see exactly what preceded the deployment
11 of a caustic substance at the time?

12 A The only thing I recall prior to, prior to
13 feeling the symptoms of the spray was some shoving, a small
14 altercation to my right.

15 Q And you've since reviewed the video of the de-
16 ployment---

17 A Yes.

18 Q At beanie man? We've already, the Court has
19 already heard evidence as to what he was doing at the time.
20 Did you, after your review, see any aggressive or hostile
21 action on the part of beanie man after reviewing the video?

22 A No, I did not. In fact, looking at the video
23 I---

24 MR. WOODARD: Objection, Your Honor. She's tes-
25 tifying to what's in the video.

1 Q She's testifying as to her interpretation of
2 the video.

3 THE COURT: She can testify to what she saw.

4 Q Yes.

5 A I saw him in a nonviolent pose.

6 MR. WOODARD: Your Honor, is this, is this---is
7 she testifying to what's on the video or is she testifying
8 to what she saw. I'm not clear.

9 THE COURT: That's what the question was.

10 Q The question is, based on your review of the
11 video---

12 MR. WOODARD: No, sir. She can't say, she can't
13 characterize what her opinion of the video is.

14 Q Shall we play the video again and have her go
15 frame by frame?

16 MR. WOODARD: No. She's not allowed to interpret
17 the video.

18 THE COURT: Just a minute. What's your question?

19 Q I was asking the witness if she had an opinion
20 as to what was happening immediately preceding the deploy-
21 ment of---

22 THE COURT: Her opinion wouldn't make any differ-
23 ence.

24 Q Her observations.

25

1 THE COURT: And the Court, the Court has seen
2 that. Do you want to ask her about what she observed?

3 Q Based on the video or at the time---

4 MR. WOODARD: I object to it being based on the
5 video.

6 THE COURT: The Court has already seen the video,
7 so there wouldn't be any reason to ask the witness about
8 that.

9 Q Okay.

10 THE COURT: She may have some observations from a
11 different angle.

12 Q I'm sorry, I didn't hear the last point, Judge.

13 THE COURT: She may have an observation from a
14 different angle that's not shown on the video.

15 Q Is it fair to say that there was a lot going
16 on that evening?

17 A Yes.

18 Q Do you have any immediate clear recollection
19 based on those events what happened with respect to that
20 first deployment at beanie man?

21 MR. WOODARD: Objection. What happened in the
22 first deployment of beanie man? Who is deploying beanie
23 man?

24 Q The first deployment of mace by Mr. Cantwell
25 toward beanie man.

1 MR. WOODARD: I'm going to object. There's no
2 evidence that there was any deployment of mace. There's no
3 evidence from her, anyway, that she had an idea who was hit
4 by beanie man.

5 THE COURT: She's describe the burning sensation.
6 You're talking about immediately before the burning sensa-
7 tion, I assume.

8 Q Yes, sir.

9 THE COURT: All right, go ahead. You can answer
10 that.

11 A Can you repeat the question?

12 Q There's a deployment of caustic substance by
13 someone who you identified as----

14 MR. WOODARD: Objection.

15 Q Your Honor---

16 MR. WOODARD: She can't testify, she can't testi-
17 fy to that.

18 THE COURT: I've got to hear the question. Go
19 ahead, what's the question.

20 Q Can you explain how that deployment affected
21 you?

22 A Yes. It was, I was in the vicinity of---

23 MR. WOODARD: Objection. She already testified
24 to the burning sensation.

25

1 THE COURT: I'll allow it. Go ahead. How did it
2 affect you?

3 A I was in the vicinity and the, I inhaled the
4 substance and it started burning my nose and my eyes.

5 Q And do you have a, do you know what caused
6 that burning in your eyes?

7 A I recognized the sensation as being a pepper
8 spray based substance.

9 Q How do you know that based on your experience?

10 A Because I have experienced chemicals like that,
11 like pepper spray before.

12 Q And how did that affect you? Were you able
13 to---were you completely incapacitated at that point?

14 A I was incapacitated over a period of I'd say
15 fifteen (15) to thirty (30) seconds. Initially I just
16 started seeing---feeling my eyes water. My initial reac-
17 tion was to try to get to safety and to retrieve my phone
18 which had been knocked out of my hand. Once I retrieved my
19 phone, I tried to find a path to safety and could not see a
20 way out.

21 Q Did you call the police?

22 A I did not.

23 Q Why not?

24 A During the procession when I was live stream-
25 ing I saw several people---

1 MR. WOODARD: I'm going to object, Judge. Wheth-
2 er she called the police or not is not relevant to whether
3 she was pepper sprayed.

4 THE COURT: Mr. Tracci?

5 Q It goes to her ability to seek help and we're
6 anticipating the question that we had earlier as to why Mr.
7 Goad didn't escape, but I'll withdraw the question.

8 THE COURT: All right. What's your next ques-
9 tion?

10 Q Were you later able to identify based on your
11 review of the video who deployed that mace.

12 A Yes.

13 Q Or that caustic substance?

14 MR. WOODARD: Objection, Your Honor. There is
15 no possible, there is no possible way that by reviewing a
16 video she can determine that whatever caused her sensation
17 came from anybody in that crowd let alone Mr. Cantwell.
18 She didn't do any scientific tests. She doesn't---she
19 hasn't testified as to her intimate knowledge of the dif-
20 ferent flavors of pepper spray. All she can say is she had
21 a sensation. She can't point to him and say if it was his,
22 nor could he point to him and say it was his. There were
23 four separate, there are four separate deployments in evi-
24 dence at this point. She can't tell you, she can't---

25

1 THE COURT: Overrule the objection. You can
2 cross-examine her on whatever she testifies about any de-
3 ployment.

4 Q Did you subsequently---were you able to iden-
5 tify who was deploying mace?

6 A Yes.

7 Q And who was that person?

8 A Mr. Cantwell.

9 Q And based on your review of the video, did you
10 link those two deployments, the first at beanie man and the
11 immediate, immediately subsequent one---

12 MR. WOODARD: Objection. She never talked about
13 an immediate subsequent one.

14 Q We are---

15 MR. WOODARD: She talked about the one for beanie
16 man.

17 Q Your Honor, we can go through the video. The
18 Court indicated to the Commonwealth that you've already re-
19 viewed the videos.

20 THE COURT: You're asking her about two deploy-
21 ments. She's only testified as to one.

22 Q Okay. After reviewing the video you noticed
23 that there were at least two deployments by Mr. Cantwell.

24 A That's correct, yes.

25

1 Q One was directly at Mr. beanie man's face,
2 correct?

3 A Yes.

4 Q You testified that he was there and he was do-
5 ing nothing aggressive when he received that.

6 A Yes.

7 Q Was there a second deployment?

8 A Yes.

9 Q Can you describe that?

10 A Yes. What I saw on the video was that Mr.
11 Cantwell---

12 MR. WOODARD: Objection, Your Honor. She can't
13 testify to what she saw on the video. It doesn't make it
14 true. All it means is that's what I saw on the video that
15 I watched after the event.

16 THE COURT: If you want to ask her what she ob-
17 served; the video is already in evidence.

18 Q What did you observe with respect to the sec-
19 ond deployment?

20 MR. WOODARD: Objection, leading.

21 THE COURT: I'll allow it.

22 Q Go ahead.

23 A I observed Mr. Cantwell reaching over a group
24 spraying pepper spray into the group of people that I was
25 surrounded by.

1 Q Did that affect you?

2 A Yes.

3 Q Did it impair you?

4 A Yes.

5 Q Did you notice that it had any effect on any-
6 body else?

7 A Yes.

8 Q Can you describe that?

9 A Yes. I saw somebody---

10 MR. WOODARD: Objection, Your Honor. She can't
11 testify as to what the effect might be on somebody else,
12 certainly without some foundation.

13 THE COURT: Mr. Tracci.

14 Q Can you describe other people around you and
15 their physical manifestations resulting from that deploy-
16 ment?

17 A Yes. I saw people with swollen eyes, with
18 tears and---

19 MR. WOODARD: Objection as to time. Was this at
20 the same time she felt it or was it later or was it before?

21 THE COURT: I'll allow it. Go ahead. What did
22 you observe?

23 A I saw other people with tears and snot running
24 down their face with swollen eyes red faces.

25 Q May I approach?

1 THE COURT: Yeah.

2 Q I'm handing you an exhibit. Does that indi-
3 cate where you are in the chaos at least immediately after
4 one of the deployments?

5 A I believe this is immediately before one of
6 the deployments.

7 Q Before one of the deployments.

8 A Yes.

9 Q Based on your recollection, were you closer
10 after the deployment?

11 A Yes.

12 Q I'll submit this to the Court.

13 THE COURT: Any objection to this?

14 MR. WOODARD: No.

15 Q So what did you do next?

16 A Next after---

17 Q After being impaired.

18 A After being impaired I looked for a way out of
19 the crowd knowing that I only had a few seconds before I
20 would completely lose my vision. I could not find a way
21 out, so I tried to take a couple of pictures with my phone
22 and call for a medic and for medical assistance.

23 Q And did that arrive at some point, the medical
24 assistance?

25

1 A No, at no point did anybody come to me with
2 medical assistance.

3 Q But did someone flush your eyes?

4 A Eventually I found somebody that was able to
5 flush my eyes with water, yes.

6 Q Now, the Court has the video in evidence and
7 there are at least four separate deployments of tear gas on
8 that video. Did you observe separate sprays as well on the
9 video?

10 A On the video, yes I did observe separate sprays.

11 MR. WOODARD: Objection. What she observed on
12 the video isn't relevant.

13 THE COURT: Again, the video is in evidence. You
14 want her to testify in regard to what she observed that
15 night.

16 Q It's going to the foundation of the next ques-
17 tion. What did you observed, based on that, were there
18 multiple deployments that evening?

19 A Yes.

20 Q Now, how do you know that it was Cantwell
21 spray that affected you?

22 A It was the closest to me and it was in a di-
23 rection towards where I was standing.

24 Q Was it an aerosol or gel?
25

1 A I believe it was an aerosol. I didn't feel a
2 gel on my face. Did you see counter protesters utilizing
3 ---

4 MR. WOODARD: Objection. Withdrawn.

5 Q Did you see any counter protesters?

6 A No, I did not.

7 Q And based on these events afterwards did you
8 file a police report?

9 A Yes. I went the next morning.

10 Q And do you have that with you?

11 A I do not have a copy with me.

12 Q I'm going to hand you a statement and criminal
13 complaint. Are these what you submitted immediately after-
14 wards?

15 A Yes. The complaint is and yes, this is a
16 statement I filled out a few days after that.

17 Q I think the Court has these, but has anything
18 changed materially on any of these?

19 A No.

20 Q Thank you. Those are my questions.

21

22 CROSS-EXAMINATION

23 By: Mr. Woodard

24 Q You testified that you went to the thing and
25 you bumped into people, is that right?

1 A Can you be more specific when you say bumped
2 into people?

3 Q Well you---I'm using your words. You said you
4 bumped into some people. That's what you testified to,
5 right?

6 A Yes.

7 Q Did you bump into Josh, your security man?

8 A I do not have a security man named Josh.

9 Q Did you have any security man there?

10 A I had somebody that escorted me after I ar-
11 rived. I did not have---

12 Q You called him your security man, didn't you?

13 A Yes. He provided me with security after the
14 fact.

15 Q Okay. Now, do you have your criminal com-
16 plaint and the things he just handed you?

17 MR. TRACCI: Right there.

18 Q Okay. Thank you. I'm going to show you a
19 document. Can you review that for me, please?

20 A Is there a specific section you'd like me to
21 focus on?

22 Q Say again?

23 A Is there a specific part you'd like me to fo-
24 cus on?

25 Q I'd like you to review the whole document.

1 A You handed me page 3. Would you like me---

2 Q You can turn the page.

3 A Okay.

4 MR. TRACCI: Are you showing the witness the
5 criminal complaint?

6 Q No. This is her statement to Albemarle PD.

7 A This is not the statement to Albemarle PD.
8 This is the statement to the University of Virginia police.

9 Q I'm sorry, it's UVA Police, that's correct.

10 A Okay. I've reviewed it.

11 Q Now, here at the bottom of page 3, did you
12 tell the truth in that (unintelligible).

13 A Specific to?

14 Q No, did you tell the truth in that whole docu-
15 ment?

16 A Yes.

17 Q Okay. And what you said then was as I tried
18 to get to safety I saw a person being hit with torches and
19 smelled fuel, is that right?

20 A That's correct, yes.

21 Q You didn't testify to that today, did you?

22 A I did not. I was not asked about torches or
23 fuel.

24 Q You were asked what happened, weren't you?

25

1 A I was attempting to describe the altercation
2 and you objected.

3 Q Now, where is the criminal complaint. May I
4 have that, too? I'm showing you your criminal complaint.

5 A Uh-huh (indicating yes).

6 Q Would you review that, please?

7 A Okay.

8 Q Now you swore under oath to that, correct?

9 A That's correct.

10 Q And on this one there's nothing about torches,
11 about fuel, is there?

12 A No, there's not.

13 Q And this one, your sworn statement, it says
14 they began to shove me. When a fight broke out to my right,
15 soon after I inhaled, slash, was affected by a chemical
16 spray, is that right?

17 A That's correct.

18 Q No talking about torches, correct?

19 A Correct.

20 Q No talking about looking there and seeing two
21 deployments by Chris Cantwell, correct?

22 A Correct.

23 Q No talking about it being right, the spraying
24 being right next to you, correct?

25

1 A I said that it was to my right in the criminal
2 complaint.

3 Q Okay. Now, you were a counter protester, cor-
4 rect?

5 A I was there to film the event. I was not part
6 of a counter demonstration that was planned.

7 Q But you were following it from several days
8 earlier on the Daily Stormer, correct?

9 A I did a lot of research on the events leading
10 up to it, including Daily Stormer.

11 Q And you got in your car and went all the way
12 out to Walmart to take pictures of Mr. Cantwell interacting
13 with the police, correct?

14 A I went out to Walmart with the intent to ob-
15 serve the size of the crowd that Mr. Cantwell had assembled.
16 I didn't know that the police would be there, so I did not
17 go there to photograph an interaction with police.

18 Q Do you recognize that document?

19 MR. TRACCI: Your Honor, I have no idea what he's
20 showing the witness.

21 Q I'm sorry.

22 MR. TRACCI: I guess I'll wait till you ask a
23 question to see how it might be relevant to what happened
24 on August 11th in the evening.

25 Q Do you recognize that document?

1 A Yes, I do.

2 MR. TRACCI: Can you---

3 Q Is that a picture of you---

4 MR. TRACCI: ---show the judge.

5 Q Huh?

6 MR. TRACCI: Can you show the judge?

7 Q Not yet. I'm going to ask questions on it.

8 MR. TRACCI: Okay. Go ahead.

9 Q That's a picture you posted to Twitter, isn't
10 that right?

11 A That's correct, yes.

12 Q And so you went down to Walmart, didn't you?

13 A Yes, that's what I testified to.

14 Q And you just said you weren't involved.

15 A I said that I observed from several rows away
16 and that's a picture that I took from several rows away.

17 Q And somehow you were able to publish on Twit-
18 ter that he was getting questioned by cops, questioned by
19 cops after allegedly brandishing a gun, isn't that right?

20 A That is what I heard from the police scanner,
21 yes.

22 Q Move that into evidence.

23 MR. TRACCI: Judge, if he would allow the---

24 THE COURT: Any objection?

25 MR. TRACCI: Relevance, Your Honor.

1 Q That was on August 11th, isn't that right?

2 A That was on August 11th, correct.

3 Q And that was the Walmart you're talking about,
4 isn't that right?

5 MR. TRACCI: And if counsel would permit the wit-
6 ness the courtesy of answering questions going forward.

7 Q I'll try. Hang on, Judge, I've got to look at
8 my list. Now, I'll show you another document.

9 A Yes, sir.

10 MR. TRACCI: Is this the same picture?

11 Q Yeah.

12 MR. TRACCI: Better resolution.

13 Q Yeah.

14 MR. TRACCI: Okay. Okay.

15 Q I'm going to show you, I'm going to show you a
16 document.

17 A Yes.

18 Q Is that a tweet you put up?

19 A Yes.

20 Q Okay, in that, in that picture that shows your
21 position at the monument, isn't that right?

22 A Yes, it does.

23 Q Move that in as evidence.

24 THE COURT: Any objection?

25 MR. TRACCI: No, sir.

1 Q I'm going to show you another document.

2 MR. TRACCI: I should see that---oh, it's the
3 same one.

4 Q Yeah.

5 MR. TRACCI: Yes, no objection.

6 Q Do you recognize that document?

7 A Yes. This is a photograph that I took as I
8 was trying to find a way out of the altercation.

9 Q Okay. Move that into evidence. And do you
10 recognize that as bigger picture of an earlier one with the
11 red arrow on it?

12 A Yes, I do.

13 Q Move that into evidence.

14 THE COURT: Any objection to these two?

15 MR. TRACCI: No, Your Honor.

16 THE COURT: What would be Defendant's 5? There
17 isn't an arrow indicating her location. This one there is.

18 Q That one.

19 THE COURT: That one is. This one doesn't
20 show---

21 Q Correct.

22 THE COURT: You're not identifying yourself in
23 this photo.

24 A Correct. I took that photo.

25 Q Now, take a look at that photo.

1 A Yes.

2 Q That's got a red arrow on it, it's just like
3 that one?

4 A Uh-huh (indicating yes).

5 Q Right? And going from your memory and not
6 from looking at this on a video, doesn't the blue, the blue
7 arrow point to Mr. Goad?

8 A The blue arrow does point to Mr. Goad, yes.

9 Q Okay. Move that into evidence.

10 THE COURT: Any objection to this?

11 Q Let me ask this question. Let's count togeth-
12 er. How many people are between you and Mr. Goad?

13 A Your finger is in the way. I can't tell. The
14 red arrow is drawn over people, but I would estimate three
15 people between me and Mr. Goad.

16 Q Three people between you and Mr. Goad? Isn't
17 it more like about fifteen (15)?

18 A In a direct line between me and Mr. Goad, I
19 can see three heads between me and Mr. Goad.

20 Q Well, move that into evidence.

21 MR. TRACCI: Your Honor, the Commonwealth does
22 not object to it being admitted. The Court---the Common-
23 wealth asks that the Court consider its probative value.
24 There is no sequence or chronology whatsoever in that vide
25

1 THE COURT: But there's no evidence to its admis-
2 sibility.

3 MR. TRACCI: No.

4 THE COURT: Okay.

5 Q Now, you said you went there to observe. Now,
6 let me show you another document. I'll show you another
7 tweet. Is that your tweet?

8 A Yes, these are all, three of these are my
9 tweets.

10 Q Move that into evidence.

11 THE COURT: Any objection?

12 Q So the Thinker, that video, Thinker Areta is
13 the best, in your opinion is the best recollection of your
14 experience that night, correct, at least around the monu-
15 ment?

16 A Can you repeat the question?

17 Q So the Thinker Areta video that you identify
18 in that tweet is your best, is in your opinion the best
19 record of your interaction around that monument?

20 A No, that's not what I indicated with that
21 tweet. What I indicated with that tweet is that it is the
22 clearest video that I had seen up until that point of my
23 involvement at the monument.

24 Q Okay. Now, bear with me, Judge, I've got to
25 find something.

1 MR. TRACCI: May I present a question to defense
2 counsel?

3 Q Yes.

4 MR. TRACCI: Are you offering these tweets for
5 the truth of the matter asserted or for impeachment purpos-
6 es?

7 Q Right now it's just the truth, her admissions.

8 MR. TRACCI: Then we'd object seriously.

9 Q Well, they're her statements. She's saying,
10 you know, this is a picture, this is where I was, that's
11 all.

12 THE COURT: These are already in evidence so
13 they're in.

14 Q Yeah.

15 THE COURT: All right. If you offer something
16 else, we'll see if there's an objection, but these are al-
17 ready in.

18 Q Yeah. In fact, you went to---in fact, you
19 went to the monument because you're an Antifa media rela-
20 tions specialist didn't you?

21 MR. TRACCI: Objection. No foundation.

22 Q Goes to motive to fabricate, Judge. Antifa is
23 the antithesis of his side, right? And she's got a motive
24 to fabricate this charge, to put him in jail.

25 THE COURT: Mr. Tracci?

1 MR. TRACCI: (Unintelligible) the objection, Your
2 Honor.

3 Q And, in fact, you were armed with a guardian,
4 right?

5 MR. TRACCI: I think there was an outstanding
6 question.

7 Q Oh, I'm sorry.

8 MR. TRACCI: What was the question?

9 Q You're an Antifi media relations specialists
10 aren't you?

11 A I don't know what you mean by that. I---

12 Q You told, you told---go ahead.

13 A Okay. I have done media relations for Char-
14 lottesville activists during the summer and I have done so-
15 cial media outreach during the summer.

16 Q You told---

17 A As far as being in Antifa, you would have to
18 be more specific as to what you mean by that, because I'm
19 not a member of any organization, so I do not act in any
20 official capacity. So can you please be a little bit more
21 specific?

22 Q You told Officer Acord that you were a media
23 relations specialist for Antifa, isn't that right?

24 A That is not correct.

25 Q It's not? What did you tell him?

1 A I told Sergeant Acord that I do media outreach
2 for Charlottesville activists including interviewing with
3 journalists and issuing press statements, press conferences.
4 I did not---I specifically told Sergeant Acord that I was
5 not a member of any Antifa organization.

6 Q Okay. And you wrote an article for The Guard-
7 ian shortly after August 11th, correct?

8 A I wrote an article for The Guardian on I be-
9 lieve it was August 14th.

10 Q Do you recognize that document?

11 A This is an excerpt from the article that I
12 wrote for The Guardian.

13 MR. TRACCI: Do you mind if I take a look, Mr.
14 Woodard?

15 Q Sorry, you can keep that. And in that docu-
16 ment, you said you went there to document the thing, but in
17 this you said I was there that night in Charlottesville and
18 then skipping down it says I was prepared to die too, isn't
19 that right?

20 A Once I was surrounded I was prepared to die,
21 yes, that's correct.

22 Q Move that into evidence.

23 THE COURT: Any objection?

24 MR. TRACCI: No objection.

25

1 Q So, well, it's true that you monitored Storm
2 Front, you accosted, well, you were out there taking pic-
3 tures of Mr. Cantwell at Walmart, correct? Correct?

4 A I do not monitor Storm Front. I did take pic-
5 tures of Mr. Cantwell at the Walmart parking lot that day.

6 Q Well, you just said you accessed Daily Stormer,
7 I'm sorry, Daily Stormer?

8 A Somebody else alerted me to the posting on
9 Daily Stormer.

10 Q Okay, and you went there and watched it?

11 A I'm sorry?

12 Q You went there and looked at it?

13 A I read the post, yes.

14 Q Okay. And then you went to UVA that night and
15 out of all of those hundreds of people, you specifically
16 spoke to Mr. Cantwell, isn't that right?

17 A I specifically spoke to a couple of people.
18 Mr. Cantwell was one of them, yes.

19 Q And you specifically spoke to Mr. Cantwell
20 about how the Walmart meet up was, isn't that right?

21 A I asked him how the Walmart meet up went.

22 Q And you did that because you wanted him to
23 know you were stalking him, isn't that right?

24 A No, that's not correct.

25 Q Now, let's light up the video for a while.

1 (The video was placed at this time.)

2

3 Q That's you isn't it, Ms. Gorcenski?

4 A That's me, yes.

5 Q Okay. Let's bump it. Is that where they
6 knocked your phone down?

7 A No.

8 Q Okay. Then there's a fight over there?

9 A Yes.

10 Q All right, but Chris Cantwell or Goad aren't
11 anywhere to be found, are they?

12 A In this frame I don't see them.

13 Q Bump it. Bump it. But there is white bald
14 guy in the wife beater, correct?

15 A I see a bald guy in a white tank top.

16 Q Yeah. Bump it. Bump it. Bump it. Bump it.
17 Bump it. There's fighting right there, isn't there?

18 A That's correct.

19 Q Right beside you.

20 A Uh-huh (indicating yes).

21 Q Bump it. Bump it. Bump. Bump. Bump. Bump.
22 Bump. Bump. Bump. Bump. Bump it. Bump it. This is al-
23 most from your point of view, isn't it?

24 A No, this is not from my point of view.

25

1 Q Okay. Bump it. Bump it. Bump it. Bump it.
2 Bump it. Bump it. Bump it. Bump it. And that's not you
3 back there, correct?

4 A That is not me, no.

5 Q Okay. Bump it.

6 A I am in front of that person.

7 Q Bump it. Bump it. Goad and Cantwell aren't
8 anywhere in that frame, are they?

9 A I can't say affirmatively whether they are or
10 are not.

11 Q Let's roll it forward. Stop it there. No,
12 roll it forward. Stop. Now, that's beanie man right there
13 up there on the monument, isn't it?

14 A Yes.

15 Q Roll it back. Roll it forward. Let's watch
16 beanie man. Now that's on the other side of the monument
17 from Mr. Goad and Mr. Cantwell, isn't it?

18 A No, that's the same side of the monument.

19 Q Well, stop. You were about, actually you were
20 standing right about here and you look that way claiming to
21 have seen Cantwell spraying, is that right?

22 A No, that's not correct at all.

23 Q Okay. Bump it forward. Keep going. Okay.
24 Well you say that's---at the time that was the best record
25 of your experience, right?

1 A At the time that was the best, the clearest
2 video I had seen of myself.

3 Q May I have the tweets, please. In fact, you
4 said this is the clearest video I've seen that shows me and
5 my involvement on the Friday night, isn't that what you
6 wrote on Twitter?

7 A That's what I wrote, yes.

8 Q But now your story is different isn't it?

9 A No.

10 Q Now, and that was your involvement, but Chris
11 Cantwell is not in there anywhere is he?

12 A I've seen Chris Cantwell in this video several
13 times already.

14 Q Well, let's go back. Do you need to go back
15 further?

16 A Yes.

17 Q Do you need to go back further?

18 A Yes.

19 Q All right. Christ Cantwell---you tell me when
20 Chris---

21 A Please pause. Please advance. Please advance.
22 One more. One more. Keep going. Keep advancing, please.
23 Stop. I see Mr. Cantwell in the upper left of that video.
24 I can see his bald head and his black shirt.

25 Q Up here?

1 A Yes.

2 Q Up here? And he is not fighting anybody,
3 right?

4 A At that moment, no.

5 Q He's not pepper spraying anybody, right?

6 A At that moment, no.

7 Q All right. Let's see the next time Mr. Cant-
8 well is there. Stop it. Let's go back. Yeah, get Mr.
9 Cantwell back in the frame.

10 A I see him right in the frame right there.

11 Q Stop right there. So come count with me.

12 A Okay.

13 Q That's Mr. Cantwell, right?

14 A Uh-huh (indicating yes).

15 Q One, two, three, four, somebody down there,
16 five, six. There's five or six people at that time, right?

17 A Sure. I don't know what your specific frame
18 of reference you're looking for here.

19 Q The number of people between you and Mr. Cant-
20 well. (Unintelligible).

21 A The number of people in a direct line between
22 me and Mr. Cantwell I would estimate as one, two, three,
23 four, five. Five people between, in a direct line between
24 me and Mr. Cantwell.
25

1 Q How many people would you estimate are in that
2 frame, forty (40)?

3 A Yeah, sure, somewhere around that.

4 Q Okay. All right, let's go forward to the next
5 sighting of Mr. Cantwell. Pause right there. That's a
6 radical agenda shirt, right?

7 A That's correct, yes.

8 Q About the same spot. Go forward. (Unintelli-
9 gible). And there he is crossing the monument, right?

10 A Correct, yes.

11 Q Okay. And now you're what, about ten or fif-
12 teen (15) feet from the monument?

13 A No.

14 Q Five feet, two feet?

15 A I would say that I'm four to five feet from
16 the monument on the rotunda side which is right to the
17 right in this, from this frame of reference.

18 Q Okay. Let's bump it. Let's go back a little
19 bit. That's beanie man on the monument, right?

20 A Yes.

21 Q Beanie man is the guy that you claim or beanie
22 man is the guy that Chris Cantwell sprayed, right?

23 A Yes.

24 Q And according to you he sprayed him seconds
25 before this right?

1 A Yeah, I think it was approximately---

2 Q And beanie man is back up on the monument,
3 right?

4 A That's correct.

5 Q Bump it. Bump it. Bump it. Let's go to the
6 next sighting of Chris. He's right there in the middle of
7 the frame, right? Right here?

8 A Correct, yes.

9 Q Yeah, okay, keep going. Advance it to her
10 next sighting of Chris.

11 A I see, I see Mr. Cantwell.

12 Q Yeah, he's right there?

13 A Uh-huh (indicating yes).

14 Q Keep going. Keep going. Keep going. Keep
15 going. Keep going. Stop. Let's go back a little bit.
16 You've got to go back some more. Keep going. See Chris
17 anymore here?

18 A I don't see him in that frame, no, in this
19 scene.

20 Q There's a lot of smoke up there, right? A lot
21 of smoke in air, correct?

22 A I see some smoke.

23 Q All right, let's go to the next video. Now
24 the video that was the best record of your experience or
25

1 whatever you said on Twitter, that didn't show Chris Cant-
2 well spraying anybody, did it? Yes or---

3 A No, it does show Mr. Cantwell reaching over to
4 spray into the group in one frame.

5 Q That video we just saw?

6 A Yes.

7 Q Let's go back. Tell me where, tell me where
8 it is?

9 A Please pause, please pause and advance frame
10 by frame. Frame by frame slowly, please. Continue. Con-
11 tinue. Continue. Keep going. Keep going. Keep going.
12 Little more. Little more. Little more. Little more.
13 Keep going. Keep going. Keep going. Continue. Continue.
14 Continue. Continue. Continue. Continue. Continue. His
15 arm is reaching up in the upper left, reaching over the
16 crowd to spray.

17 Q What (unintelligible).

18 A Pepper spray. Advance the frame, please.
19 Keep going. Keep going. Keep going. Keep going. Keep
20 going. Keep going. Keep going. Keep going. Right there.
21 May I point at the screen? No, left. Right. Up. To the
22 right slightly. That arm just to the right of the mouse
23 cursor.

24 Q That thing right there?

25 A Yes.

1 Q You're saying that's his arm.

2 A I'm saying that is Mr. Cantwell's arm.

3 Q And where is your clear sight to him spraying
4 beanie man down low on the backside of all of those people?

5 A That happened prior to this.

6 Q But it's not in here, is it?

7 A It is in this video.

8 Q Let's go back.

9 A Please pause. Advance frame by frame. Keep
10 going. Keep going. I'll tell you when to stop. Stop.
11 That's beanie man in the frame just above the dude's head
12 in the center.

13 Q Right there?

14 A Yes.

15 Q That's beanie man there?

16 A Yes.

17 Q Okay. Let's go forward. So you see beanie
18 man, but you don't see Chris spraying anybody right?

19 A At this point no, but---

20 Q Let's go.

21 A Okay.

22 MR. TRACCI: Your Honor, at this point I'd just
23 like to ask the relevance. Is there any question that---
24 are you trying to create doubt as to whether your client
25 sprayed beanie man?

1 Q No. I'm trying to create doubt as to whether
2 or not her sworn testimony that she saw him spray beanie
3 man from this position somehow miraculously through this
4 throng of people is not the truth.

5 THE COURT: If there's an objection, the Court
6 will rule on the objection, but otherwise go ahead, ask
7 your questions.

8 Q Okay. Let's go to the next video which is
9 Guardian Gor. Now, there you are, isn't it? That's you
10 right, that's you right there, isn't it?

11 A Yes.

12 Q Okay. Let's go forward a little bit. Stop
13 there. Now, you've got your eyes on your nose, right, or
14 your eyeglasses on your nose, right?

15 A That's correct.

16 Q And you're not rubbing your eyes, right?

17 A Not in this frame, no.

18 Q You're not wiping your face.

19 A No, I---

20 Q Let's go back. Let's go back. There are you,
21 right?

22 A Yes.

23 Q Right. And let's go forward a little bit.
24 And you look to your right, right?

25 A Uh-huh (indicating yes).

1 Q Right. And see, you somehow see through all
2 those people that Chris Cantwell sprays not once but twice,
3 correct?

4 A This was after both of the pepper spray inci-
5 dents, so at this point I'm not seeing from this angle Mr.
6 Cantwell spraying because it has already happened.

7 Q All right. Let's go forward. There you are
8 and there's Mr. Cantwell. Let's go a little bit more. Now,
9 stop right here. Let's go back. There you are and you
10 just retreat, but you're not showing any signs of being
11 pepper sprayed at all, are you?

12 A I am showing signs of pepper spray.

13 Q By retreating? But not touching, you know,---

14 A Yes. When pepper sprayed---

15 Q You're pulling out, is that right?

16 A I'm attempting to find a way out while being
17 affected by the pepper spray.

18 Q But you're not rubbing your eyes, not rubbing
19 your nose, correct?

20 A That's correct.

21 Q All right. Let's go to number four. No, I
22 think we're at number three. Now, that's sideways, Judge,
23 and I apologize, but we can't figure out how to turn it the
24 other way. That's from your live stream, isn't it?

25

1 A I don't know, possibly. Yes, this is from my
2 live stream.

3 Q Turn on the sound please.

4
5 (The video was played at this time.)

6
7 Q Pause it there. And there's a fight to your
8 right, isn't that right?

9 A That's correct, yes.

10 Q Let's go back a little bit. Yeah, that's
11 about right.

12
13 (The video was played at this time.)

14
15 Q Just hold it right there. That's the fight
16 you see to your right and that's your view back there to-
17 wards Cantwell, isn't that right?

18 A That's roughly correct, yes.

19 Q Let's go forward. And in that amount of time
20 you saw Cantwell spray twice, is that right?

21 A Around that time, yes.

22 Q Which one is that? That was three?

23
24 (The video was played at this time.)

25

1 Q There was a fight and there's Emily. So pause
2 it right there. There's Emily again and you're coming back,
3 right? You're not screaming for anybody, right?

4 A That's correct. I have not yet called for a
5 medic.

6 Q Okay. This is after you claim to have been
7 pepper sprayed, isn't that right?

8 A That's correct, yes.

9 Q Go on back. Go on forward. And stop. Go
10 back a little bit. And right there, that's when you took
11 that photo of Chris, isn't it?

12 A That's when I took a photograph, yes. The one
13 that I believe that you've already entered into evidence.

14 Q The one you posted on Twitter. Let's go for-
15 ward a little bit. And stop it right there. You're a lot
16 further away from the monument now, aren't you?

17 A I have moved to the side of the monument. I
18 estimate I'm about four to six feet away.

19 Q Somehow you've moved through a crowd that you
20 couldn't get through, right?

21 A I moved a few feet from where I was.

22 Q Okay, let's go forward. Let's go back. Stop.
23 Now, that guy there, he's covering up his head, right?

24 A Which guy?

25 Q The guy that just went by?

1 A With the green shirt?

2 Q No, not green shirt. Go back a little bit,
3 Jeremy. That's Mr. Cantwell, right?

4 A That's Mr. Cantwell.

5 Q Let's go back. And there's a guy covering his
6 head.

7 A Yes, briefly.

8 Q And there you are, there's your back.

9 A Uh-huh (indicating yes).

10 Q And there's Mr. Cantwell with his hands up,
11 isn't that right?

12 A That's Mr. Cantwell right there.

13 Q Let's go back. That's Mr. Cantwell, isn't it?

14 A That's Mr. Cantwell, yes.

15 Q And somebody is claiming mace, isn't that
16 right? Somebody is saying there's mace out there, right?

17 A Somebody, yeah.

18 Q So this would be the fifth mace incident, cor-
19 rect?

20 A I don't know what the other four are. I am
21 alleging two.

22 Q Well, you say there were---Cantwell sprayed
23 two that you claim to have seen and this would be---I as-
24 sume there are two more and this would be one more, right?

25 A I, I, what are the other two?

1 Q There's Cantwell one, Cantwell two, dragon,
2 dragon arm and the mist, mysterious mist that Goad talked
3 about, number four. Those are four so far that we've iden-
4 tified.

5 A Okay. I've seen those four.

6 Q This would be number five, correct?

7 A Okay. I suppose. I don't see mace in this
8 video.

9 Q Okay, but I mean, it's possible there was mace
10 there, right?

11 A Sure.

12 Q Let's go back a little bit. Stop right there.
13 That shows Mr. Cantwell's arms up.

14 A Uh-huh (indicating yes).

15 Q And you're what, three feet from him?

16 A I would estimate less than that.

17 Q Two feet from him?

18 A Sure.

19 Q Okay. Let's go a little further. A little
20 further. Bump it. Bump it. Bump it. Bump it. Bump it.
21 Bump it. Let's go. Keep going. Keep going. You didn't
22 see Mr. Cantwell anymore after that night, correct?

23 A I did not, no. I saw him briefly the next day
24 if that's relevant.

25

1 Q Okay. And that's an officer right there,
2 isn't it?

3 A That is.

4 Q And he was walking right there where you were,
5 wasn't he?

6 A I didn't see him.

7 Q Let's go back. And you didn't see the officer
8 because that's about where you were, right? We can go back.

9 A At this point I don't know where I am. I
10 don't see myself.

11 Q Right, and the question is not where you were,
12 the question is where the officer is.

13 A The officers are right there in the frame, I
14 see them.

15 Q Yeah, they're going right by the monument
16 where you had been.

17 A Where I had been. I don't know where I was.

18 Q Seconds earlier.

19 A Seconds earlier, sure. I had maybe gotten out
20 by that point, I don't know.

21 Q Okay, okay. We're done with that. Now, as-
22 suming number five is a pepper spray event, how did you de-
23 termine that the burning sensation you had was caused by
24 Chris Cantwell's pepper spray?
25

1 A I determined that the burning sensation that I
2 felt was caused by Mr. Cantwell's pepper spray because I
3 recognized myself in a near vicinity of his two pepper
4 spray events in after the fact examination of photo and
5 video evidence.

6 Q Okay, and it's utterly impossible from your
7 point of view that it was from any of the citronella can-
8 dles, not the burning fuel that you smelled right?

9 A Correct, I---

10 Q And it's impossible that---

11 MR. TRACCI: If the witness---

12 Q I'm sorry.

13 MR. TRACCI: Could be permitted to answer the
14 question.

15 Q Go ahead.

16 THE COURT: Did you finish your answer?

17 A Correct. The sensation I felt was commensu-
18 rate with pepper spray.

19 Q And how did you determine that it wasn't from
20 event number three, the dragon arm spraying?

21 A From the dragon arm spraying after the fact
22 when reviewing video evidence I did not see evidence that
23 he sprayed his chemical in my direction and that he was
24 farther away from me when he sprayed that.

25 Q Three feet further, right?

1 A Uh---

2 Q Maybe four?

3 A Possibly.

4 Q And did you review the video of Mr. Cantwell
5 with is arms up? Did you ever review that?

6 A Which video with his arms up? I see a
7 video---

8 Q The one I just showed you.

9 A That one there?

10 Q Yeah.

11 A When you say arms up, do you mean arms to his
12 face or arms like this?

13 Q Going like this. No, going like this.

14 A I have seen that very recently, yes.

15 Q And you discounted that as a possible source
16 of your pepper spray, isn't that right?

17 A I don't see any pepper spray in that video so
18 I don't know if Mr. Cantwell was affected by pepper spray
19 prior to that.

20 Q Do you recognize that?

21 A I do, yes.

22 Q Is that a picture of you?

23 A It is a picture of me.

24 Q It's a picture of you on October 15th, isn't
25 it?

1 A That is correct.

2 THE COURT: Any objection?

3 MR. TRACCI: I'm just curious as to the relevance
4 of it.

5 Q She is an Antifa operative. She stalked my
6 client and then after the fact she, after the fact she
7 identified---

8 MR. TRACCI: That sounds like argument to me,
9 Your Honor.

10 THE COURT: You're showing the Court a picture of
11 October 15th.

12 Q I'll withdraw it. I'll withdraw it. Correct
13 me if I'm wrong, your sworn statement that it was Chris
14 Cantwell's specific spray out of five is pretty much just
15 your opinion, isn't that right?

16 A It is my belief that being as his deployments
17 were the closest to me and aimed in my direction that it is
18 most likely that his deployments of spray were the ones
19 that affected me.

20 Q But you can't tell for sure, can you? You can
21 just say it is most likely.

22 A Yes.

23 Q But you swore under oath that it was his pep-
24 per spray and nobody else's, isn't that right?

25

1 A I swore that it was my belief that it was his
2 spray and nobody else's.

3 Q Your Honor, can I have the criminal complaint?
4 Your statement here is, I recognize the man spraying the
5 agent as Christopher Cantwell. Mr. Cantwell is a known po-
6 litical figure, and is a headliner of 12 August Unite the
7 Right rally. Correct?

8 A Correct.

9 Q I recognize the people he is spraying from my
10 video. Correct?

11 A Correct.

12 Q They were positioned to my right, correct?

13 A All that is correct, yes.

14 Q The overspray from the agent affected me di-
15 rectly, correct?

16 A Yes.

17 Q No mention of two events, correct?

18 A At the time of the complaint, when I wrote the
19 complaint I did not know of any other deployments of pepper
20 spray. Only after the fact upon reviewing video evidence
21 in the weeks following did I see other deployments of pep-
22 per spray.

23 Q Somehow you managed to miss the other three,
24 right?

25

1 A No, I did not manage to miss the other three.
2 I was asking you for clarification what you meant by the
3 other ones.

4 Q Okay. After all that, all that video and
5 things, I was able to find them, but you weren't, right?

6 A I never said that I wasn't able to find them.
7 I don't see a fifth deployment. I don't see mace deployed
8 in that fifth incident.

9 Q Did you ever, did you ever tweet out that
10 Chris Cantwell was the only one who sprayed any pepper
11 spray?

12 A I believe I may have made the statement based
13 on what a University police officer told me on the day of
14 August 12th.

15 Q Okay.

16 A But I don't know that that was correct nor are
17 my tweets under oath, so I don't know if that was a com-
18 plete version of the truth.

19 Q Okay. But you were, but you were swearing to
20 ---you were swearing it was Chris Cantwell based on basi-
21 cally your guess, right?

22 A Based on the evidence I had seen up to that
23 morning and the report I had given to the University of
24 Virginia police I wrote that statement.

25

1 Q One moment, Judge. And your statement was
2 based on the, your assumption that no one else---your
3 statement that Chris Cantwell sprayed was on the basis of
4 your assumption that no one else but Chris Cantwell sprayed,
5 isn't that right?

6 A I don't think that's correct. I based my
7 statement on the available evidence I had at the time which
8 showed Mr. Cantwell spraying into the face of somebody that
9 I recognized as being positioned very close to me, to my
10 right, at that, at that time. I did not say that only Mr.
11 Cantwell sprayed, just that to the best of my knowledge I
12 was affected by his overspray. That is a statement that I
13 stand by after reviewing video evidence that shows that Mr.
14 Cantwell's deployments of pepper spray were both the clos-
15 est to me and in the direction of me at that time.

16 Q And that's the only thing, they were close to
17 you, right? But if you---is that right? They were closest
18 to you than anybody else's that you reviewed, isn't that
19 right?

20 A Correct.

21 Q But you didn't review them all, did you?

22 A I reviewed as much video as I have been privy
23 to.

24 Q But you didn't review the one with his arms up
25 like this.

1 A I did review that, yes.

2 Q That was after the fact, isn't that right?

3 A That was, and I---

4 Q Long after the fact.

5 A That was, I would say, fifteen (15) seconds,
6 fifteen (15) to thirty (30) seconds after---

7 Q And despite the fact that you were within two
8 feet of a man who is apparently pepper spraying you still
9 maintain that it was overspray from twenty (20) or from
10 twenty (20) people away from you that affected you, isn't
11 that right?

12 A I maintain that overspray from Mr. Cantwell at
13 a target who was not twenty (20) people away from me was
14 what affected me because prior to the video that shows Mr.
15 Cantwell's arms before his face I was feeling the effects
16 of the pepper spray, and I have testified to the fact that
17 I was feeling the effects of the pepper spray prior to that.

18 Q And there's no possible way you could be mis-
19 taken is there? No further questions. Oh, sorry, I'm sor-
20 ry, I do have one. Now, do you recognize that document?
21 I'm sorry. Do you recognize that document except it's in
22 black and white?

23 A This looks to be two documents printed over
24 each other.

25 Q Right.

1 A Which specifically?

2 Q I'm referring to this down here. Is that
3 something you posted on Twitter?

4 A The Spencer, Enoch, Kessler, Baked Alaska---

5 Q The hit list?

6 MR. TRACCI: Can I ask what the purpose of the
7 document is here? Are you going to try to---

8 Q No, excuse me. Let's do this. Do you recog-
9 nize that document?

10 A Yes, these are three of my tweets.

11 Q And you posted them on August 18th I think?

12 A No.

13 Q What date?

14 A August 17th.

15 Q August 17th which was the same day Mr. Goad
16 took out his warrant, right?

17 A I don't know when Mr. Goad took out his war-
18 rant.

19 Q Well you communicated with Mr. Goad, didn't
20 you?

21 A The only time I communicated with Mr. Goad
22 prior to August 17th was when I met him for the first time
23 on August 12th.

24 Q Okay. You never told him that Chris Cantwell
25 was the one who was spraying?

1 A I told him on August 12th that I saw a picture
2 of Mr. Cantwell spraying and that I recognized him from the
3 photograph.

4 Q Okay. And somehow he just got it into his
5 head that he was sprayed by Cantwell too, is that right?

6 A I can't speak to what Mr. Goad saw---

7 Q Okay.

8 A ---said, believed, how anything got into his
9 head.

10 Q Now, who is Baked Alaska?

11 A Baked Alaska is a political commentator whose
12 legal name is Anthime' Gionet. He has a You Tube video and
13 a twitter account with several, with over a hundred thou-
14 sand followers.

15 Q And on your list here you have a little chili
16 pepper by his name, right?

17 A Correct.

18 Q And you put that there because he got (unin-
19 telligible) the next day.

20 MR. TRACCI: I object to this.

21 THE COURT: What is the objection?

22 MR. TRACCI: I'd like to object as to relevance.

23 Q She's counting---

24 MR. TRACCI: As to relevance.

25 Q It goes to motive---go ahead.

1 THE COURT: All right.

2 Q It goes to motive fabricate, Judge. She is,
3 she has put, she put the Walmart meet up on Twitter. If
4 she were interested in justice, there's no point to put it
5 on Twitter. She also put her live stream of her accosting
6 him at the torch light march. She put that on Twitter and
7 made sure that he knew that she had seen him at Walmart.
8 And then she sometime after this event, she determined---

9 THE COURT: I've heard all that evidence. In re-
10 gard to that I find it's cumulative and I'll sustain the
11 objection. What's your next question?

12 Q And on this document on August 17th, there's a
13 big X on there on Cantwell, isn't it?

14 A That's correct, yes.

15 Q Move that into evidence.

16 MR. TRACCI: I'm going to object as to relevance
17 and also what the purpose is that you're asking it be ad-
18 mitted. If it's for the truth of the matter asserted, I'd
19 say it's hearsay.

20 Q Well, it's her statement.

21 THE COURT: She's already describe it. It's al-
22 ready in evidence. I don't need to document it.

23 Q Okay.

24 THE COURT: She's described it. What's your next
25 question.

1 Q That's all my questions.

2 THE COURT: All right. Mr. Tracci, any other
3 questions?

4 Q Hold it, hold it. One final question. How
5 did you find out about the Walmart meet up?

6 A I found out about the Walmart meet up because
7 Mr. Cantwell advertised the Walmart meet up on his own
8 mailing list.

9 Q That's all the questions.

10 THE COURT: Mr. Tracci?

11

12 REDIRECT EXAMINATION

13 By: Mr. Tracci

14 Q Any question that you observed Mr. Cantwell
15 deploying mace on more than one occasion on August 11th in
16 Albemarle County?

17 A There's no question, no.

18 Q Any question in your mind that those deploy-
19 ments affected you directly?

20 A No question at all.

21 Q Any question that they caused impairment to
22 you?

23 A No question at all.

24

25

1 Q Any question that they caused what you per-
2 ceived to be physical manifestations of impairment in other
3 people?

4 A No question at all.

5 Q No further questions.

6 THE COURT: Ms. Gorcenski, did you have any ver-
7 bal communication with Mr. Cantwell other than your ques-
8 tion of how did the Walmart meet up go?

9 A It was a short back and forth exchange. I
10 asked him how the Walmart meet up went. He asked me if I
11 called in a false police report. I said no, I got there
12 late and that was it.

13 THE COURT: You testified in regard to---was
14 there any, on the night of August 11th was there any other
15 verbal exchange between you and Mr. Cantwell?

16 A No, there was not.

17 THE COURT: Questions?

18 MR. WOODARD: No, sir.

19 THE COURT: Mr. Tracci?

20 MR. TRACCI: No, Judge.

21 THE COURT: All right, thank you.

22 A Am I free to go, Your Honor?

23 THE COURT: Is there any objection to her being
24 released?

25

1 MR. TRACCI: You might be called for another rea-
2 son is there's someone who contradicts you later.

3 THE COURT: She can be released from this pro-
4 ceeding.

5 MR. TRACCI: From the courtroom here, yes, Your
6 Honor.

7 THE COURT: Any objection, Mr. Woodard?

8 MR. WOODARD: No, sir.

9 THE COURT: All right. You're free to go or stay
10 as you wish.

11 MR. TRACCI: There is a protective order. Are we
12 going to address that today?

13 MR. WOODARD: Judge, it ain't over.

14 THE COURT: There is a protective order on the
15 docket that will have to be taken up if Ms. Gorcenski wants
16 to be heard on it. All right, Mr. Tracci?

17 MR. TRACCI: The Commonwealth rests and moves to
18 certify, Your Honor.

19 MR. WOODARD: I move to strike. Let me find my
20 materials here. The Commonwealth has to prove---the Com-
21 monwealth hasn't put on evidence---hold on, Judge, let me
22 find this stuff. All right. Your Honor, I would move to
23 strike because I don't think the Commonwealth has estab-
24 lished probable cause. They have to---and we're dealing
25 only with their evidence. They have to establish malice.

1 I do not believe they have done so. Malice is cool, calm
2 deliberation. But the evidence is that there is a huge
3 fight going on here. Now, of course, Commonwealth witness-
4 es are blaming it on the other side. But malice is negated
5 by heat of passion or extreme provocation. And you've seen
6 the videos and there's something going on there. And I
7 would submit that despite what they say, the videos show
8 that beanie man was attacking Mr. Cantwell, Goad was right
9 next to him. They were going forward attacking them and
10 that is extreme provocation and heat of passion. When
11 you're getting attacked by six or seven people, and you saw
12 the video, then you have the right to defend yourself. And
13 that's what Mr. Cantwell did. So I submit that the evi-
14 dence does not support malice because malice is cool, calm
15 deliberation. Jeremy---Judge, I'm going to show you---I'm
16 going to show you what malicious---no, maybe I won't. And
17 that's not what's going on here. He was in the middle of a
18 brawl. As you saw on there, there was brawling on either
19 side of him, and I think that negates any kind of malice.
20 He obviously sprayed beanie man. But under Diffendal v.
21 Commonwealth and Foster v. Commonwealth, and I've got to go
22 through this, a man has a right to defend himself. And he
23 has the right under 312 to use pepper spray and deploy it
24 in self-defense. It specifically says it's a felony unless
25 there's legal justification. I submit there's legal justi-

1 fication here for deployment the pepper spray. If the de-
2 ploying of the pepper spray was legally justified, then all
3 of its effects are legally justified. Further, Judge, I
4 don't think that they have proven beyond any doubt---I
5 don't think they've proven squat, because neither one of
6 those two people have any way of determining which pepper
7 spray hit them. We've got five different pepper spray
8 events. And the Commonwealth has to prove that it was his
9 pepper spray. They can't say oh, there was a lot of pepper
10 spray flying about. Both of them said that there were cit-
11 ronella candles out there right next to them. Both of them
12 acknowledged that the air was full of smoke. Maybe it was
13 the smoke that caused their face to burn. Maybe it was the
14 citronella candles. Maybe it was one of five separate pep-
15 per sprays. The Commonwealth, to meet their burden, has to
16 prove that it was his, not something that was floating in
17 the air. So, I would move to strike.

18 THE COURT: Mr. Tracci.

19 MR. TRACCI: With respond---with regarding to by
20 the elements of 18.2-52 malicious bodily injury by means of
21 any caustic substance, the Commonwealth has met and exceed-
22 ed its burden. The Court heard evidence of a malicious de-
23 ployment of a caustic substance resulting in bodily injury
24 to another. Ms. Gorcenski, and she testified to somebody
25 else being affected as well, by means of an acid, lye or

1 other caustic substance. With respect to malice, I'm not
2 sure exactly where counsel derives his definition of malice,
3 but the model jury instruction defines malice as the state
4 of mind which results in the intentional doing of a wrong-
5 ful act to another without excuse or justification at a
6 time when the mind of the actor is under the control of
7 reason. Malice may result from any unlawful or unjustifia-
8 ble motive, unjustifiable motive including anger, hatred or
9 revenge. With respect to heat of passion, Williams v. Com-
10 monwealth indicates that, quote, where it is not the victim
11 of the crime who provoked the defendant's heat of passion,
12 the evidence will not support a finding of heat of passion.
13 The evidence the Court heard was from Mr. Goad and Ms.
14 Gorcenski, and also the video was of a person described as
15 beanie man standing there provoking no threat being mali-
16 ciously maced by the defendant without an excuse or justi-
17 fication. There's no question as to who deployed the mace.
18 That's no longer in question. There's no question that
19 that caustic substance caused some impairment. Witnesses
20 and victims testified to that. The only question is wheth-
21 er any of that was justified. We submit that the eviden-
22 tiary testimony and testimony indicated and reflected no
23 excuse or justification whatsoever. Furthermore, the de-
24 fense quoted Foster. In terms of the purpose of a prelimi-
25 nary hearing the Commonwealth has the burden to present ev-

1 idence sufficient to demonstrate that we have sufficient
2 cause to have charged the accused. That is whether reason-
3 able ground exists to conclude that a crime has been com-
4 mitted and that the identity of the accused is who the Com-
5 monwealth alleges. We've met both burdens there. The le-
6 gal standard is not beyond a reasonable doubt. It's akin
7 to a preponderance of evidence. We've heard uncontested
8 evidence that the defendant deployed gas causing injuries
9 to other either maliciously or unlawfully, that's without
10 justification. There's the first beanie man deployment
11 without provocation. There is the second one which is sort
12 of an indiscriminate spray, clearly disproportionate and
13 unlawful to the threat. We heard evidence about the size
14 of the crowds, three hundred (300) to thirty (30) uncon-
15 tested. The only question is the proof, weight and credi-
16 bility of some of these issues and respectfully, sir, these
17 are questions for a trier of fact not the preliminary hear-
18 ing and not the district court and that's Foster v. Common-
19 wealth and Williams v. Commonwealth. The Commonwealth has
20 met its burden and we ask that the charges be certified.

21 MR. WOODARD: Your Honor, my law comes from
22 Witherow v. Commonwealth where it explains malice and heat
23 of passion very, very well, a 2015 case, Judge. Quote, the
24 element of malicious wounding that distinguishes it from
25 unlawful wounding is malice, expressed or implied, and mal-

1 ice in the legal acceptance means any wrongful act done
2 willfully or purposefully. Skipping down, malice is evi-
3 denced either when the accused acted with a sedate, deliber-
4 erate mind, and formed design, or committed a purposeful
5 and cruel act without any or great provocation. As noted
6 above, heat of passion excludes malice when provocation
7 reasonably produces fear. Again, heat of passion is deter-
8 mined by the nature and degree of the provocation and may
9 be founded upon rage, fear or a combination of both. You
10 saw the videos, Judge. The Supreme Court has rejected the
11 argument that a plea of self-defense and a claim of pro-
12 voked heat of passion do not conflict with each other. You
13 can do them in the same thing. Your Honor, there are two
14 problems. One of them is Goad changes his identity. I
15 mean you ask him right there, you're no longer certain, no,
16 sir, I'm not. And it's pretty clear that what happened was
17 when he got off of that the Commonwealth started saying oh,
18 well, here are the other two ones and that's the problem
19 that I have. That's why I move to quash. They can't
20 change the testimony that supports the warrant. They can
21 only change the charge and they haven't done that. So I
22 don't think that goes anywhere. Additionally, you watch
23 the video. These people are sitting there saying I smelled
24 pepper spray and claiming that they were grievously wounded.
25 But you watch the video. Mr. Goad continued to fight. He

1 didn't leave immediately. And we've got the video of him
2 managing to leave and he was grinning and giggling when he
3 left. That's not impairment. That's not bodily injury.
4 That's nothing. And no, I think I get the end of it. And
5 Ms. Gorcenski is the same way. I showed that video of her
6 retreating showing she's so impaired she's taking pictures
7 with her phone. That's how impaired she is. No, she's not
8 impaired. She's not impaired one darn bit. Additionally,
9 Judge, on her live stream, the reason I showed that, was to
10 show that the sound was off and what she claims to have
11 been pepper sprayed and got this with she doesn't say a
12 word. She doesn't say a thing. She's quiet as a mouse
13 which I'm pretty sure what everyone in this room wishes I
14 would be. But she never mentioned it. She never said
15 Cantwell sprayed me on that. She never said I saw Cantwell
16 spray somebody. She never said oh Lord, I smell anything,
17 I smell something. What happens here is both of these peo-
18 ple and especially Gorcenski, she saw a way to take out a
19 political opponent and she took it. And now she comes in
20 here and says oh, I was affected. Well, it's not on the
21 video. She wasn't affected. She was able to get out of
22 there on the video. And if she was unable to leave, what's
23 she doing here now? What was she doing here today? I ask
24 that the evidence be stricken.

25

1 THE COURT: (Unintelligible) motion to strike.
2 Overrule the motion to strike. Any evidence from the de-
3 fense?

4 MR. WOODARD: Yes, sir.

5 THE COURT: First witness.

6 MR. WOODARD: Mr. Newcome.

7 THE COURT: Mr. Newcome, you were sworn earlier.

8 MR. WOODARD: Talk to that man. He makes the de-
9 cisions.

10

11

12 **TED NEWCOME**, having been duly sworn testified as
13 follows:

14

15 DIRECT EXAMINATION

16 By: Mr. Woodard

17 Q You're Mr. Newcome?

18 A Yes.

19 Q And were you at the monument on August 11th in
20 Charlottesville?

21 A At the Jefferson monument, yes.

22 Q Yes, sir. And, and where in relation to you
23 was---

24 THE COURT: What's your first name just for the
25 record.

1 A Ted.

2 Q Where in relation to you was Chris Cantwell?

3 A Oh, probably three yards to his right.

4 Q You were three yards to his, three yards, nine
5 feet to his right?

6 A Roughly three, four yards, yes.

7 Q Okay. And did there come a time when a brawl
8 broke out?

9 A Certainly.

10 Q Okay. Please start right before the brawl.
11 Well, was Mr. Cantwell in view during that, during that
12 time?

13 A Yes.

14 Q Okay. Tell the Judge what you saw concerning
15 that brawl?

16 A Wherever, I was in the, I was directly between
17 the monument and the building behind us.

18 Q That would be the rotunda with the pillars?

19 A Correct.

20 Q Okay.

21 A There was a brawl breaking out to my eleven
22 o'clock and I'd seen some violence going on over there. I
23 moved forward, but then stopped from going all the way for-
24 ward so I was ahead of everybody else, so I could look to
25 my left and see what was going on with Christopher Cantwell

1 at this point. To my left I seen somebody charging at
2 Christopher Cantwell at which point I seen Christopher
3 Cantwell spray that guy in the face with pepper spray in
4 self-defense.

5 Q Stop here. The guy you saw charging, did he
6 have kind of a brown shirt and a kind of beanie hat on?

7 A Yes.

8 Q And we talked, you've reviewed the same videos
9 I have. We've talked about him being beanie man, right?

10 A Correct.

11 Q Okay. Now, where did beanie man come from?

12 A From the crowd of counter protesters.

13 Q Yeah, we're going to call them counter pro-
14 testers today. And what did he look like?

15 A Well, he had big glasses, some facial hair,
16 dark facial hair, a beanie on.

17 Q Jeremy can you run the unicorn riot Goad vid-
18 eo? Yeah, that's good.

19

20 (The video was played at this time.)

21

22 Q That's beanie man right there getting sprayed,
23 right? Go back a little bit, Jeremy. Yeah. That right
24 there. Stop it.

25

1 A Yeah. I'm on the, I'm on the other side there
2 looking in, but yes, that's the guy that I seen. That's
3 exactly the scene that I seen, except I'm on the other side
4 there a little ways.

5 Q And you see the guy in the jean jacket right
6 next to beanie man?

7 A Yes.

8 Q Yeah. What were those two doing right before,
9 right before this?

10 A No clue.

11 Q Say again?

12 A No clue.

13 Q Okay. But then beanie man comes out and goes
14 towards Chris, right?

15 A That's correct.

16 Q And what was beanie man's stance?

17 A It was a fighting stance, two feet---

18 MR. TRACCI: If the witness could describe with-
19 out editorializing.

20 A That's what I was about to do.

21 MR. TRACCI: Well, if you could let me finish my
22 objection.

23 A Certainly.

24

25

1 MR. TRACCI: Without editorializing what he was
2 doing. If he could just answer the question as to where
3 his hands were.

4 Q Your Honor, I'll update the question. Mr.
5 Newcome could you please stand up? Could you please move
6 out here? Could you please replicate the stance that you
7 saw beanie man in?

8 A Okay.

9 Q Okay. Now, your fists are clenched?

10 A Yes.

11 Q Were his fists clenched?

12 A Yes.

13 Q Okay. And your knees are bent?

14 A Knees are bent as if to charge at somebody.

15 Q Okay. Do you have any experience with what
16 the use of that stance might be?

17 A Yes, sir.

18 Q What kind of experience is that?

19 A Martial arts experience.

20 Q Okay. What kind?

21 A I have had four years of Ninjutsu, a half a
22 year of Mui Tai and a half a year of Jiu Condo.

23 Q Any Taekwondo?

24 A No.

25

1 Q You got to look into it. Please have a seat.
2 And in those martial arts, those stances are for fighting
3 one on one with another person, right?

4 A Correct.

5 Q Okay. Now, did you see his face?

6 A Yes.

7 Q What did his face look like?

8 A His eyes were trained---

9 Q Was he smiling?

10 A No, he was not smiling.

11 Q What were his teeth doing? Were then clenched
12 or open?

13 A I didn't see his teeth.

14 Q Okay.

15 A Yeah, it was clenched jaw.

16 Q Okay. Is there, is there any---now, who is
17 behind beanie man?

18 A Counter protesters.

19 Q Okay. Any idea how many?

20 A I imagine---well, from my, the best recollec-
21 tion of my memory I think there was like twenty-five (25),
22 thirty (30) of them.

23 Q Okay. And were they all going forward follow-
24 ing beanie man?

25 A Some of them were.

1 Q Okay. How many of them were?

2 A I couldn't tell you offhand.

3 Q More than five?

4 A Yeah.

5 Q Okay. And so you saw Chris spray beanie man,
6 right?

7 A Yes.

8 Q Okay, and then what did you see?

9 A Then I seen a long haired guy---well, okay, so
10 the guy was sprayed, I looked forward and there's some vio-
11 lence in front of me and---

12 Q I'm sorry, I didn't hear you.

13 A Yeah, so after I see Chris spray beanie man,
14 my focus shifts directly to my front because there's vio-
15 lence. And then I look to my left again and that's when I
16 see a long haired guy grab somebody's tiki torch, hit some-
17 body with it and fling, like run right past my twelve
18 o'clock.

19 Q Okay.

20 A And that's when I see Chris Cantwell charge
21 across my twelve o'clock as well and then they end up on
22 the ground here.

23 Q Okay.

24 A To my three o'clock.

25 Q What happened next?

1 A Then some guy, a big guy, comes to attack
2 Christopher Cantwell. I go to physically remove that per-
3 son. And then Chris Cantwell is taken up by a few guys.
4 And then I look forward to assess my situation again be-
5 cause at this point it's a complete melee. And there's a
6 hand in my face and I'm wondering what's going on at this
7 point. And then I realize that that hand has pepper spray
8 spraying me in the face, and then I realize that it burns
9 and I withdraw from the melee.

10 Q How quickly did you realized it burned?

11 A I stood there and took it for about a full two
12 and a half seconds before I realized what was going on.

13 Q Okay. And where was this pepper spray event
14 happening?

15 A Right where Christopher Cantwell was on the
16 ground and then got taken up.

17 Q Okay, okay. Right at the corner of that monu-
18 ment?

19 A Yes, sir.

20 Q Okay, and what happened next concerning Chris-
21 topher Cantwell?

22 A Well, at this point I'm blind. I can hear him
23 in the background. But my concern at this point, you know,
24 as much as I like Christopher Cantwell, is isn't for his
25 well being, it's for my own. And so I get with my guys.

1 We go to some other people that say that they have water
2 and then there ends up not being very much water. And then
3 I go and sit at a bench and I wait in agony until we final-
4 ly go back to the initial park where we find water.

5 Q Let's move to where you see Chris spray beanie
6 man.

7 A Okay.

8 Q Okay. You were nine feet away, right?

9 A Roughly, yeah.

10 Q Did you get a big old lungful of his spray?

11 A I didn't receive any pepper spray from that
12 direction, no.

13 Q Okay.

14 A I received some pepper spray from my right
15 during that period of time, didn't realize what it was, of
16 course, hindsight being what it is.

17 Q What about the second time---so you never got
18 any, you never got a big old lungful of pepper spray from
19 Chris's direction at all?

20 A No, not from the left side, from the right
21 side, yes.

22 Q Okay, okay. Jeremy, pull me up a picture of
23 Gorcenski. It's just going to be---it's going to be the
24 very beginning clip of that video.

25

1 (The video was played at this time.)

2

3 Q Taking a look at the person on the screen.

4 A Okay.

5 Q Have you ever seen her before?

6 A I thought that was a guy because of the Adam's
7 apple and that's the person that stole somebody's torch,
8 hit them with it and then came across my twelve o'clock.

9 Q Okay.

10 A I seen that guy one more time on the ground
11 after Christopher Cantwell got picked up.

12 Q Okay. Was that---so that was the person who
13 was running across your front?

14 A Yes, with a tiki torch.

15 Q With a tiki torch.

16 A Yes.

17 Q Really? Okay. Did you notice any impairment
18 that that person might have had?

19 A No. It was a full on sprint like, like he was
20 trying to get away from somebody.

21 Q Didn't bump into the monument in their blind-
22 ness?

23 A No. He certainly seen everything that was go-
24 ing on. In fact, he looked me square in the eye after
25 Christopher Cantwell was picked up.

1 Q Okay. Can you move it forward a little bit?
2 Stop it there. Do you see, do you see the guy in the wife
3 beater tee shirt?

4 A I do.

5 Q Can you tell the Court whether you were to---
6 I'm going to be wife beater, were you two wife beaters left
7 or to his right or---

8 A Well, that dashing gentleman right there looks
9 like of like me, doesn't it?

10 Q This one right here?

11 A No.

12 Q Right here?

13 A No, the guy right in front of you. There you
14 go.

15 Q This guy here?

16 A Yeah.

17 Q Can you go forward with that, Jeremy? So you
18 were right there? You didn't smell a whiff of pepper
19 spray?

20 A I didn't---

21 Q From Chris's direction?

22 A No.

23 Q That's all my questions.

24 THE COURT: Mr. Tracci?
25

CROSS-EXAMINATION

By: Mr. Tracci

Q So you testified and I'll just remind you you are under oath. You testified that you didn't see what happened? You had no clue about what happened immediately preceding the first deployment of mace?

A Correct.

Q No clue at all?

A No clue.

Q And how many folks did you see behind Mr. Cantwell when he deployed the mace at beanie man?

A There was countless people behind Mr. Cantwell.

Q At the moment he deployed mace your testimony is there were countless people, and how far back were they behind Mr. Cantwell?

A I'm not sure---

MR. WOODARD: Your Honor, do you mean people behind Mr. Cantwell or people behind beanie man?

Q Mr.---both, I'm going to ask both.

MR. WOODARD: Okay.

A Okay, so behind Mr. Cantwell is a bunch of ti-ki torch wielding gentlemen, a lot of them, right.

Q And how far behind Mr. Cantwell were those ti-ki torch wielding gentlemen?

1 A They were all around at this point. I'm look-
2 ing to my left and all I can see is a sea of tiki torches
3 and Christopher Cantwell who I single out because I know
4 him personally.

5 Q So you don't know the answer to that question?

6 A No.

7 Q And your observations are based on, solely on
8 your recollections of that evening? You haven't--have you
9 looked at the video since?

10 A I did like right after and I haven't really
11 paid attention to the whole thing until today really.

12 Q So your testimony to the Court is all of those
13 very precise recollections are predicated on your recollec-
14 tion of what was happening in all that chaos?

15 A Yes.

16 Q Now, you claim that Mr. beanie man was in a
17 fighting stance, correct?

18 A Correct.

19 Q Did you realize that he had been pushed to the
20 ground immediately before that?

21 MR. WOODARD: Objection. There is no evidence he
22 had been pushed. I ask the question be changed to was on
23 the ground?

24 THE COURT: The question is, did the witness re-
25 alize that?

1 Q It's a yes or no question.

2 MR. WOODARD: He's got the right to give his an-
3 swer.

4 A I did not.

5 Q Now you talked about how you liked Mr. Cant-
6 well.

7 A Certainly.

8 Q And made a joke out of the fact you were con-
9 cerned about your safety more than his.

10 A Right.

11 Q How long have you know him?

12 A Since 2015.

13 Q How do you know him?

14 A Well, from his podcast back when it was some
15 garbage podcast back in his, his anarcho (sic) capitalist
16 days.

17 Q So he was involved in something better in your
18 view since those garbage days?

19 MR. WOODARD: Objection, irrelevant.

20 Q Going to bias.

21 MR. WOODARD: Not really bias.

22 THE COURT: You can develop some evidence on bias
23 but again, there's just---the Court will allow it for some
24 limited basis. Go ahead.

25

1 Q So he's involved in something better over the
2 last year or so?

3 A Well, no, it's a question of philosophy and
4 it's always good to have a conversation, regardless of
5 where that conversation may take you. It's not a good idea
6 to shy away from having a dialogue with whomever it is that
7 might have an idea that's different than yours.

8 Q You indicated Mr. Cantwell is someone you like.

9 A Certainly.

10 Q Is it his views that you like or do you like
11 him as a person?

12 A I like him as a person.

13 THE COURT: How he arrives at it I don't think is
14 material.

15 A So---

16 Q Do you think---

17 THE COURT: You don't have---

18 Q Do you think this is a---what are your views
19 as to this, the charges against him? Do you have any views
20 as to the charges?

21 MR. WOODARD: Objection, Your Honor. His opinion
22 of the charges against him is utterly irrelevant.

23 Q Do you think he's---

24 THE COURT: Mr. Tracci---

25 Q Yes, sir.

1 THE COURT: Do you want to be heard on the objec-
2 tion?

3 Q Yes, sir. I do think it goes to his bias. I
4 think his willingness to---

5 THE COURT: The Court is not interested in any-
6 body's political feelings. It makes no difference. He's
7 indicated he has positive feelings for Mr. Cantwell. He
8 hadn't indicated anything about any other witness.

9 Q Your Honor, the Court permitted questions as
10 to Ms. Gorcenski's identity as an activist and so forth and
11 indicated that it went to her bias as to alleging something
12 that didn't occur.

13 MR. WOODARD: It went to her motive to fabricate.

14 THE COURT: And the Court has just indicated that
15 he has positive feelings about Mr. Cantwell. Now, whether
16 that's going to make---impact his testimony, that's a mat-
17 ter for argument, but we're not going to address the polit-
18 ical issues.

19 Q You deliberately misrepresented the gender of
20 the witness in this case, is that true?

21 MR. WOODARD: Objection, Your Honor.

22 A No.

23 THE COURT: What's the objection?

24 MR. WOODARD: You just told him, you just told
25 him to get away from politics and now he is saying you mis-

1 represented the gender by identifying somebody with an Ad-
2 am's apple.

3 Q I think it goes to bias, Your Honor, and hos-
4 tility---

5 MR. WOODARD: There you go, Judge. I've got an
6 Adam's apple, too.

7 Q Hostility toward a victim in this case and his
8 deliberate misrepresentation of that victim's gender, know-
9 ing that she doesn't identify as (unintelligible).

10 THE COURT: I don't see how gender is relevant or
11 not except he may not be identifying the correct person.

12 A I don't even know that this person---

13 MR. WOODARD: Be quiet.

14 THE COURT: That's right, you don't have to---I
15 sustain the objection. It makes no difference.

16 A Sorry. If it's a girl I'll---

17 MR. WOODARD: Be quiet.

18 THE COURT: Mr. Newcome, you don't have to answer.

19 Q Now, you were talking about your expertise in
20 martial arts. So can you go into more detail about that?
21 How skilled in martial arts you are?

22 A I've---

23 MR. WOODARD: I have a soft objection to that.

24

25

1 THE COURT: I'm not sure how to address a soft
2 objection. The Court received it for the purposes of he
3 might know what a defensive or offensive stance is.

4 Q How much, how much experience in the martial
5 arts do you have?

6 A Well, I stated that I had a total of five
7 years about experience.

8 Q Do you have general views and just an opinion
9 as to the fighting abilities of counter protesters general-
10 ly that you---

11 MR. WOODARD: Objection. His opinion of their
12 fighting abilities is irrelevant. He testified I saw this
13 guy in a stance that looks to me like an offense fighting
14 stance. Now we're getting back into politics.

15 Q He was---we're not getting onto politics. He
16 was testifying as to the reasonableness of Mr. Cantwell's
17 response to a fighting stance and I wanted to have his
18 opinion as to---

19 THE COURT: It's what he observed. That's the
20 only thing that's relevant.

21 Q Were you physically afraid of the counter pro-
22 testers?

23 A No.

24 Q Those are my questions.

25 MR. WOODARD: Briefly, Judge.

REDIRECT EXAMINATION

By: Mr. Woodard

Q Mr. Newcome, did any, you know, five or ten of them ever come after you alone?

A No.

Q Nothing further.

THE COURT: Any objection to the witness being excused?

MR. WOODARD: No, sir.

THE COURT: Mr. Tracci?

MR. TRACCI: No objection.

THE COURT: Free to go. All right, Mr. Woodard?

MR. WOODARD: David Rotter.

THE COURT: Mr. Rotter, you've already been sworn.

DAVID ROTTER, having been duly sworn testified as follows:

DIRECT EXAMINATION

By: Mr. Woodard

Q Can you state your name, please?

A David Rotter.

Q And talk to this gentleman, he makes the decisions. And you were there on August 11th at the Jefferson monument at UVA?

1 A Correct.

2 Q And there came a time when some brawls broke
3 out and there was some pepper spraying done?

4 A Yes.

5 Q Okay. Where were you in relation to Chris
6 Cantwell?

7 A I was slightly behind him to his right.

8 Q Okay, and did there come a time when he
9 sprayed a guy with a beanie hat?

10 A Yes.

11 Q Okay. What was going on before that?

12 A So the man in the beanie hat with the beard
13 had---

14 Q We call him beanie man.

15 A Beanie man had attacked somebody else with a
16 white wife beater, bald head, he had been knocked to the
17 ground.

18 Q Okay, hold on. I'm sorry, beanie man attacked
19 the bald guy in the wife beater?

20 A Yes, sir.

21 Q Tee shirt. Okay. Okay. And beanie man,
22 that's how beanie man got on the ground?

23 A Yes.

24 Q Okay. Had you noticed beanie man before he
25 got into a fight with wife beater?

1 A No.

2 Q Now, I said got into a fight. I think you
3 said beanie man attacked wife beater.

4 A Yes, with another person, I believe.

5 Q Okay. So it was two on one with wife beater?

6 A Yes.

7 Q And what happened to the one that wasn't bean-
8 ie man?

9 A He was knocked to the ground as well.

10 Q Okay. So wife beater took care of both of
11 them?

12 A Yes.

13 Q Okay, and so beanie man is on the ground.
14 What happens next?

15 A He popped up very quickly and aggressively and
16 charged towards Mr. Cantwell.

17 Q Okay. Was there anybody with him?

18 A No, not to my knowledge.

19 Q Okay. What were the people behind beanie man
20 doing?

21 A They were---as he was coming forward they
22 started to move forward as well.

23 Q Okay. Jeremy can you call up a picture, call
24 up the Goad video again?

25

1 (The video was played at this time.)

2 Q Now, see the guy there with the glasses and
3 the jean jacket? Now, can you---let me do this. Can you
4 point yourself out in this picture?

5 A Yes, I'm right there behind Mr. Cantwell.

6 Q Right there?

7 A Yes, sir.

8 Q Okay. Okay. Right here?

9 A Yes.

10 Q Okay, and---

11 A There are better shots of me. That picture
12 that's now somewhat famous, it's pretty obvious it's me.

13 Q Well, this is the one we got. We'll have to
14 go with this. We'll have to go with this one. Okay. And
15 so since you're right behind him, let's bump it forward a
16 little bit. Let's go back a little bit. All right, now,
17 yeah, let's go back a little more. Okay. Bump it, bump it.
18 Now, that's wife beater right there, right?

19 A Uh-huh (indicating yes).

20 Q And you're kind of over here?

21 A Yeah, I've got my hands out.

22 Q Is that your hand?

23 A Like to say, you know, stay back.

24 Q Both?

25 A Yep.

1 Q Okay, okay, and that's beanie man on the
2 ground, isn't it?

3 A Yes, it is.

4 Q Okay, and that's where he popped back up from?

5 A Correct.

6 Q Okay, bump it. Bump it. Bump it. Bump it.
7 Bump it. Bump it. Bump it. Bump it. Bump it. Bump it.
8 Bump it. Okay, now, when beanie man popped back up, what
9 was he doing?

10 A He looked like he was coming right at Chris
11 with a clenched fist.

12 Q Okay. What did his face look like?

13 A Enraged, furious, teeth clenched. He was fu-
14 rious.

15 Q Okay. And, I mean, in that picture you're
16 right behind Chris. What do you think?

17 A If I was standing where Chris was standing and
18 he was coming at me in that manner I would be ready to de-
19 fend myself.

20 Q All right. Bump it forward. Bump it forward.
21 Bump it.

22 THE COURT: Excuse me. Excuse me, go ahead.

23 Q Okay, bump it forward. Bump it. Bump it.
24 And so he's sprayed and the giant group of people coming at
25 him, they recoiled, right?

1 A Uh-huh (indicating yes).

2 Q Now there are people behind Chris and you're
3 one of the, right?

4 A Uh-huh (indicating yes).

5 Q Are you glad that Chris stopped the charge?

6 A Absolutely. I mean, I had already seen vio-
7 lence break out. I mean, throughout the whole thing I had
8 my hands out in this manner to say---

9 Q All right, stop it right there.

10 A Please don't come any closer.

11 Q That's you, correct?

12 A Yes, sir.

13 Q You're trying to say, you know, whoa, calm
14 down, we don't want to do this?

15 A Yes, yes.

16 Q Okay. And what was the---Mr. Tracci, is he a
17 protester or counter protester?

18 MR. TRACCI: He's a protester.

19 Q Okay. What were the counter protesters doing?

20 A They kept screaming and they kept coming for-
21 ward.

22 Q Okay. Bump it forward. Bump it forward.
23 Bump it forward. Bump it forward. And also an arm comes
24 out. Okay, you're still, that's still you with your arm
25 out there, right?

1 A Yes, sir.

2 Q Okay. Now, at that point did you get a big
3 old lungful of pepper spray?

4 A No, not at that point.

5 Q Okay. You're still breathing pure air.

6 A Yes, sir.

7 Q Okay. Bump it forward. Bump it forward.
8 Bump it forward. Keep going. Keep going. Keep going.
9 Keep going. Keep going. Keep going. Bump it forward.
10 There you go. Now, the second thing here, what's going on
11 with that?

12 A It happened very quickly, but basically that's
13 the point where everybody had of kind of collided. I be-
14 lieve, I heard Chris or somebody else say that somebody had
15 a baton. The next thing I remember was seeing Chris on the
16 ground and I had gone to his left side. Now we had moved
17 to the right and Chris was on the ground. I go to his left
18 side to get his back and try and grab him and that's when I
19 got the pepper spray.

20 Q Okay, but you made it---how far to you reckon
21 it was from---I mean, you're going to be back in there
22 somewhere, right?

23 A Uh-huh (indicating yes).

24 Q How many people---the---were you wound up?
25 Right?

1 A Oh, yeah, yeah.

2 Q Between there and this, how far do you esti-
3 mate that would be?

4 A Maybe ten, fifteen (15) feet?

5 Q Okay. How many people are there?

6 A I couldn't tell you. Everybody, there were a
7 lot of people there.

8 Q It was packed, right?

9 A Yeah, oh yeah.

10 Q Okay. Now, at this point did you get a big
11 old whiff of pepper spray?

12 A No.

13 Q Okay, you're still---

14 A Yeah.

15 Q So you're still breathing clear air?

16 A Correct.

17 Q Okay. Let's go forward a little bit. And
18 keep going. There, now Chris is---stop right there.
19 That's, that's Chris right there, right?

20 A Yeah.

21 Q In the middle. Do you know where you are in
22 that?

23 A I can't tell.

24 Q Okay. Okay.

25

1 A That could be me in the blue jeans with the
2 short---nah, it's hard to tell.

3 Q Okay. Let's go forward.

4 A Yeah, at that point I'm still right there be-
5 hind Chris.

6 Q Okay. All right, keep going. Stop.

7 A That's me.

8 Q Who is this guy right here?

9 A That's me.

10 Q No, no, this guy here.

11 A Oh.

12 Q That's you.

13 A Yeah, that's me.

14 Q Who is that guy there?

15 A I can't---

16 Q That's beanie man, isn't it?

17 A It's hard for me to tell, yeah.

18 Q (Unintelligible).

19 A Yeah, that's him.

20 Q Okay.

21 MR. TRACCI: He's leading the witness.

22 THE COURT: Well, it's suggestive.

23 Q Do you know who that is?

24 A Who, who is?

25 Q That guy?

1 A Yeah, it looks like the same guy that just got
2 pepper sprayed by Chris.

3 Q Okay, and what were you two doing?

4 A Me and him, at that point Chris was either at
5 the ground or almost on the ground and I was getting ready
6 to try and pull him out of there. I was, I was fixing to
7 leave right at that point.

8 Q What was beanie man doing?

9 A I couldn't---I couldn't tell you, I don't re-
10 call.

11 Q Bump it forward. Let me ask you this, he
12 wasn't sitting on the side of the monument crying because
13 he had been pepper sprayed, was he?

14 A No.

15 Q Okay. Bump it forward.

16 A Everybody was fighting.

17 Q Okay. Keep going. Okay. Leave it there,
18 Jeremy. Let me fast forward with you, David. You're at
19 the corner of the monument.

20 A Yes.

21 Q And Chris is somewhere on the ground.

22 A Uh-huh (indicating yes).

23 Q What happened next?

24 A I had gone to, I believe I had put my hands on
25 his back or on his shoulder to try and pull him off and

1 then at that point people had gotten in between us and we
2 were separated. I did not see Chris the rest of the night.

3 Q Okay. Answer any questions Mr. Tracci might
4 have.

5 A Yes, sir.

6

7

CROSS-EXAMINATION

8 By: Mr. Tracci?

9 Q We've seen this video a few times. You're
10 basing your observations from that evening on the video or
11 what you observed at the time?

12 A What I remember at the time. I don't---like
13 at this point during the video I don't recall what the guy
14 with the beanie that got peppered sprayed was doing. It
15 was a huge mash of people. It was a lot going on.

16 Q You don't recall what Mr. beanie man was doing.
17 Who do you recall?

18 A I recall Chris being on the ground and---

19 Q Was that before or after he maced beanie man?

20 A After.

21 Q After. Did you see what happened immediately
22 preceding beanie man being maced?

23 A Yeah, he had---

24 Q You just testified---

25

1 A Gotten into a scuffle with the man with the
2 wife beater.

3 Q And you described your recollection of events
4 as how? I don't want to mischaracterize what you just said.

5 A My recollection of the event was---

6 Q Of the events in terms of how chaotic it was?

7 A Yeah, it was, it was confusing.

8 Q No further questions.

9 MR. WOODARD: I'm done with him.

10 THE COURT: Any objection to Mr. Newcome being
11 excused?

12 MR. TRACCI: No.

13 MS. PATHER: Free to go or stay as you wish.
14 Thank you. All right, Mr. Woodard?

15 MR. WOODARD: Might I confer with my client,
16 Judge?

17 THE COURT: Yes.

18 MR. WOODARD: Call Chris Cantwell.

19 THE COURT: Mr. Cantwell, I'm not sure if you
20 were sworn or not.

21 MR. CANTWELL: I don't believe I was, Your Honor.

22

23

24 **CHRISTOPHER CANTWELL**, having been duly sworn tes-
25 tified as follows:

DIRECT EXAMINATION

By: Mr. Woodard

Q Mr. Cantwell, do you remember the evening of August 11th at the monument?

A I do.

Q Let's go back before that. Let's go back to ---the whole thing started about nine, 9:30, something like that, right?

A In the evening?

Q Yeah.

A At UVA?

Q Yeah.

A I would say roughly, yes.

Q And I believe there was a meeting before that?

A Yes.

Q Okay. And you were present at that meeting?

A I was.

Q And did you---what if anything did you tell them were your conditions for attending any rallies?

A Since I had been made aware of threats against us, and since I had been falsely accused of brandishing a firearm earlier that day, I said that I would not attend the UVA demonstration unless we were coordinating with law enforcement because I was afraid that we would be attacked.

1 Q Mr. Cantwell, he gets the answers, not the
2 bench. His bench gets the answers.

3 A I was, I was, I had been made aware that we
4 had been threatened. I had been falsely accused of bran-
5 dishing a firearm earlier in the day, and so I told the or-
6 ganizers of the event that I would not attend unless they
7 coordinated with law enforcement.

8 Q And did there come a time when your condition
9 was satisfied?

10 A I was told by Ely Moseley that law enforcement
11 would be, would be at UVA with us and that they would pro-
12 tect us from counter protesters.

13 Q Okay. And did there come a time that you went
14 to UVA?

15 A I did.

16 Q And before that, and you-all were forming up
17 and did there come a time when you saw Emily Gorcenski?

18 A Yes. I now know that that was Emily Gorcenski.
19 I did not know that at the time.

20 Q You didn't know that was her at the time.

21 A But, yes.

22 Q Okay, and then, and what was she doing?

23 A She asked me about my Walmart meet up which is
24 the meet up that I posted behind my pay wall for paying
25 members of my listening audience.

1 Q Was she filming you?

2 A Yes.

3 Q And so let's fast forward here to---did there
4 come a time when you were down by the monument?

5 A Yes.

6 Q Okay. Did there come a time when brawling
7 broke out?

8 A Yes.

9 Q All right. What had you been doing before
10 that?

11 A As we---well, along the march it became obvi-
12 ous to me that law enforcement was not protecting us. All
13 right, we were---I did not have a torch and the people at
14 the front of the march said if you don't have a torch, get
15 off to either side and if Antifa comes you are to confront
16 them.

17 Q Okay. Did you have a flashlight?

18 A I did.

19 Q Okay. And did you have a can of pepper spray?

20 A I did.

21 Q Where did you get the pepper spray from?

22 A I bought it on eBay many, many months prior.

23 Q Okay.

24 A It's on my key chain at all times. I always
25 have it.

1 Q So when you say many, many months, is that six
2 or ten or fifteen (15)?

3 A I don't remember exactly when I bought this
4 one because it was to replace another one. The one I had
5 was in a plastic casing and I bought it to replace a metal
6 one that was all banged up from having been on my key chain
7 for years prior with no use.

8 Q Okay. Okay. Now, so you had a flashlight and
9 you had pepper spray and everybody gets over to the monu-
10 ment. What happens next?

11 A I feel it's important to point out that along
12 the march agitators were trying to bump into people with
13 torches and this was giving me a safety concern.

14 Q Is that what kind of set you off, you know---

15 A Yes. I was on edge the entire time because
16 they kept on bumping into the torches. And so, and it was
17 my instruction to keep them away from the people with the
18 torches, so I attempted to do that.

19 Q Did you---

20 A I put myself between the agitators and the
21 marchers.

22 Q And that's when you grabbed them by the hair
23 and beat the hell out of them, right?

24 A No, no, nothing of the sort.

25 Q Did you use harsh words to them?

1 A I certainly did.

2 Q Okay. Okay. Did you engage in any kind of
3 fisticuffs whatsoever with those people?

4 A No fisticuffs, but I did push one gentleman.

5 Q Okay, okay. What happened next?

6 A As we approached the Jefferson statue, we came
7 through, I believe, it's been called the rotunda, the pil-
8 lars there. We saw more counter protesters surrounding the
9 statue, and I became afraid at that moment because I was
10 under the impression that law enforcement was going to be
11 between us and the Antifa.

12 Q And that didn't happen.

13 A No, that did not happen. And allow me to dif-
14 ferentiate two things. There's been some confusion as to
15 what somebody sees on the video versus what they remember,
16 okay.

17 Q You have to answer my questions.

18 THE COURT: Just answer Mr. Woodard's questions.

19 A Okay.

20 Q Yeah, you've got to answer my questions.

21 A I'm sorry.

22 Q Did there come a time some brawling happened?

23 A Yes.

24 Q Okay, because the police ain't there, right?

25 A That's right.

1 Q Okay, and, and David is right behind you,
2 right?

3 A I did not know that at the time. I know that
4 today.

5 Q Okay, okay, so put us there. You're standing
6 there and I believe, I believe you've got your flashlight
7 up in your left hand?

8 A Yeah.

9 Q Okay. And where is your pepper spray?

10 A And my pepper spray is down at my waist in my
11 right hand.

12 Q Okay. What happened next?

13 A I see the guy in a white tank top, the bald
14 guy in the white tank top fighting with the guy we've
15 called beanie man. And there is other violence breaking
16 out around me that is---I can't describe because it's out
17 of my---I'm focused on that conflict.

18 Q Were you surprised that there was that
19 fighting going on right there?

20 A It's difficult to say that I was surprised be-
21 cause I talk about this stuff for a living. I know those
22 people are dangerous and the reason I asked for law en-
23 forcement is because I knew that they would attack us. But
24 I was concerned with it, yes.

25

1 Q Okay. Were you kind of, you know, holy cats,
2 there's a brawl going?

3 A Yeah.

4 Q Okay. What happened next?

5 A It occupied my full attention and then, though
6 I did not---I saw beanie man go down and tank top disengage,
7 and then beanie man pop back up and come towards me in what
8 I perceived to be a threatening stance at which point I
9 pepper sprayed him.

10 Q Okay. Was there anybody with beanie man?

11 A Yeah.

12 Q Who?

13 A I don't know these people. I recognized Goad,
14 now that I've been able to see the videos and him being
15 here today, but I had no idea who he was at the time. I
16 don't know any of the other people there say for Ms.
17 Gorcenski who I now know about. But there were, you know,
18 several people. I would have a difficult time estimating
19 how many were directly behind the beanie man guy, but there
20 were several people behind him.

21 Q Was it like five, seven, ten?

22 A Depending on how one defines behind, right,
23 because he can't have more than two people directly behind
24 him but he's in front of a mob of people.

25

1 Q Okay. And was he---what was his relationship
2 to the mob of people?

3 A He was in front of them.

4 Q Okay. Were they, were they moving together?

5 A Yes.

6 Q Okay, and what direction were they moving in?

7 A Towards me.

8 Q Okay, and where was Goad in relation to beanie
9 man?

10 A To my left. I'm sorry. He's to, well, he
11 would be to beanie man's right then. He was to my left.

12 Q Okay, and he was coming forward, too?

13 A Yes.

14 Q Okay. What did he look like? What did his
15 face look like? Was he smiling?

16 A I don't think a whole lot of people were smil-
17 ing out there that night.

18 Q Okay, okay. What happened next?

19 A Allow me to differentiate my recollection from
20 the video, okay?

21 Q Okay.

22 A In that in my mind spraying beanie man and
23 what we've seen in the video as me going back happens as
24 one thing, okay. I have, I, it's not until you bring that
25

1 ---it's not until my attorney brings this video to the jail
2 and shows me that I'm made aware of this going back in the
3 second time, okay. In my mind I'm dealing with a singular
4 threat of a group of people coming at me, okay. And so ap-
5 parently, looking at the video I see that there are two
6 separate deployments, but I'm in my mind dealing with the
7 same threat.

8 Q Okay, and so beanie man is coming at you, Goad
9 is with him, right?

10 A I see Goad off to the left. I make a con-
11 scious decision not to engage Mr. Goad. I saw him and
12 looked at him. He disengaged and I disengaged from him. I
13 did not spray him.

14 Q Okay. He---did he disengage when he saw you
15 spray beanie man?

16 A Yes.

17 Q Okay, and you weren't going to---

18 A Shortly after.

19 Q Okay, like a split second after, right?

20 A Yeah.

21 Q Okay, and so you weren't going to spray him
22 because he wasn't---

23 A He was not a threat to my safety, so I didn't
24 spray him.

25

1 Q Okay, okay. And you don't have any conscious
2 recollection of the Red Sea parting and going back together,
3 correct?

4 A I'm sorry, Red Sea?

5 Q People.

6 A I mean, there's like a sea of humanity behind
7 me comes in after I spray.

8 Q Okay.

9 A Right, so as I sprayed, from looking at the
10 videos it appears that my group was emboldened by me spray-
11 ing and they came in after that.

12 Q Okay.

13 A And this, this, I was, you know, I panicked at
14 this point, frankly.

15 Q Okay. Were there counter protesters coming
16 forward, too?

17 A Yes.

18 Q At the time, at the time you pepper sprayed?

19 A Yeah, it was two groups of people who hated
20 each other attacking one another.

21 Q Okay, and you were kind of in the middle,
22 weren't you.

23 A I sure was.

24 Q Okay. All right, what happened next?
25

1 A So as the groups clash, I believe that several
2 counter protesters are attacking one of my guys, that sev-
3 eral of them are on top of one of mine, at which point I
4 run over there. In the course of my deploying at beanie
5 man and the people behind him my pepper spray ran out. I
6 let go of it.

7 Q Okay.

8 A And I ran over to the, to the people who were,
9 I perceived were on top of one of our guys and I began to
10 hit them with my fists. Once that pile broke up I, I moved
11 further towards the rotunda. I saw a woman with an expand-
12 able baton. I yelled get that fucking stick, I believe
13 several times and I got pepper sprayed. If you have seen
14 the video, my hands go up here is when I felt it. I hear
15 someone yell mace and I yell get that fucking stick again
16 because I perceive that she's a threat to me and others.
17 I'm afraid she's going to break my skull open with this
18 thing. And I urgently got out of there as fast as possible
19 with the help of others.

20 Q An expandable baton?

21 A Yes.

22 Q Bailiff, come over here please. Bailiff.

23 BAILIFF: What do you need, Mr. Woodard.

24 Q I just want to show him the baton. We're not
25 going to take it off of him. Your baton is just as good.

1 No, I didn't want to handle it, I just wanted you to---
2 Something like this?

3 A Well, it was expandable. I can see the ridges
4 in the thing is how I gather that it's expandable.

5 Q Okay. And so you dive in there and you pepper
6 spray him?

7 A Yes.

8 Q Okay, and that's why you're going like this in
9 the video?

10 A Yes. And, well, on top of the pepper spray, I
11 had already been pepper sprayed and I put my hands up be-
12 cause I was afraid I was going to get hit with the stick.

13 Q Okay, okay. And then what happened next?

14 A Several guys guided me towards what I later
15 found out was like a first aid station with police. They
16 guided me over to some bench and I sat down and while---as
17 my vision recovered I saw a bunch of reporters and police
18 around me.

19 Q Okay. Did you get zapped straight in the
20 fact?

21 A Huh?

22 Q Did you get pepper sprayed straight in the
23 face?

24 A Straight in the face and all down my bo---I
25 mean, I got soaked with it. It was like a fire hose.

1 Q Okay.

2 A It went, it was so bad literally it went down
3 my pants and I had to shower, yes.

4 Q Okay. Now, when you were---by the time you
5 got over to the bench, police had shown up?

6 A I'm sorry?

7 Q Police had shown up?

8 A Yes.

9 Q Okay.

10 A That was the first time I saw them was when my
11 eyes opened from the pepper spray.

12 Q Okay. Answer any questions Mr. Tracci may
13 have.

14 CROSS-EXAMINATION

15 By: Mr. Tracci

16 Q Mr. Cantwell, you have combat training, is
17 that true?

18 A I took wrestling in junior high school and I
19 did one semester in college when I took a karate class, yes.

20 Q So you've never had multiple types of combat
21 training?

22 A Well, that is two different types of combat
23 training, yes, wrestling and karate.

24 Q I just want to read something that you had
25 written about your capacity for violence.

1 A Yeah.

2 Q You said you fucking bet I do. I carry two
3 pistols and I've been in multiple different types of combat
4 training. I can fucking harm a man and I'll put an end to
5 a life if I have to. I've been involved with enough vio-
6 lence to know that it can go very bad and I take prudent
7 measures to avoid getting myself into violent conflict.

8 A Yeah.

9 Q Did you say those words?

10 A I sure did.

11 Q And when you came to Charlottesville were you
12 expecting violence?

13 A I was hoping very much to avoid violence.
14 However, I had been threatened---

15 Q If you could just start answering the question.

16 MR. WOODARD: Objection, Your Honor.

17 A I had been threatened repeatedly.

18 THE COURT: Go ahead. You can finish your an-
19 swer. Go ahead.

20 A I had been threatened repeatedly. I came to
21 Charlottesville expecting to participate in a permitted
22 demonstration championed by the ACLU where we coordinated
23 with law enforcement to avoid violent conflicts.

24 Q So you were anticipating violence though?
25

1 A I was anticipating people attacking us. I was
2 also anticipating the government preventing that from hap-
3 pening like they did in Pikeville.

4 Q Did you refer to the police and people prepar-
5 ing as the criminal element?

6 A I'm sorry, say that again?

7 Q As the criminal element---the protesters were
8 the criminal element?

9 A The counter protesters?

10 Q Yes.

11 A The counter protesters, I perceived to be a
12 criminal element, yes.

13 Q What are your views of the counter protesters?
14 Do you hold them in high regard?

15 MR. WOODARD: I'm going to object here, Judge.
16 This is getting kind of far afield, I think.

17 MS. PATHER: Mr. Tracci, what's the relevancy of
18 that?

19 Q Your Honor, it goes to his bias and the malice
20 that he has towards these people, including Mr. Goad and Ms.
21 Gorcenski.

22 MS. PATHER: The Court has already ruled. The
23 Court is not going near any political issue, it's complete-
24 ly irrelevant.

25

1 Q Your Honor, this is not a political issue.
2 This is his view of the protesters. This is highly rele-
3 vant.

4 THE COURT: He's already described his view of
5 them, all right, and he's (unintelligible) what he's done.

6 A I perceived them to be a threat.

7 THE COURT: That's all right. That's all right.

8 MR. WOODARD: Be quiet.

9 THE COURT: And that's the only (unintelligible).
10 What's your next question, Mr. Tracci.

11 Q I do have a quote about protesters I want to
12 read and see if he recognizes it, Your Honor. Just a mo-
13 ment, please. Did you say these words about left wing pro-
14 testers? I think chemical and biological weapons can do a
15 great deal of good for mankind.

16 MR. WOODARD: Objection, Your Honor. You just
17 told him not to go into political stuff and then he did.

18 A Judge, if we go over---

19 MR. WOODARD: Be quiet, Chris.

20 THE COURT: Mr. Tracci?

21 Q I'm sorry, Judge, I was trying to get on the
22 record his views about left wing protesters.

23 THE COURT: And it doesn't make any difference.

24 Q Okay, withdrawn. I'll take it back, okay.
25

1 THE COURT: It doesn't make any difference, com-
2 pletely irrelevant.

3 Q You have some combat training. You're a per-
4 son who can take care of himself?

5 A I can.

6 Q Tend to remain in control of yourself most of
7 the time?

8 A Yeah.

9 Q You carry weapons?

10 A Yes.

11 Q In order to carry weapons you've got to main-
12 tain your composure and control yourself, is that true?

13 A That's right.

14 Q And you had weapons when you came to Char-
15 lottesville that day, correct?

16 A Sure did.

17 Q Can you just quickly describe to the Court
18 what weapons you had?

19 A I had an AR15, an AK47. I had a Ruger LC9. I
20 had a Kel-Tec P3AT. I had a Glock 19. I had the now infa-
21 mous can of pepper spray, police brand pepper spray on my
22 keychain. I had a folding knife somewhere and I had a bal-
23 listic, two different ballistic vests.

24 Q So you were expecting more than opposition,
25 maybe a war when you came to Charlottesville, is that true?

1 A Well, now, that's not accurate. As a matter
2 of fact, I had the rifles because I thought I might go
3 shooting with some of my friends later on, but I did bring
4 the pistol for self-defense because I thought that I might
5 be attacked, and I find pistols to be a very effective
6 method of stopping people from attacking you.

7 Q How many rounds of ammunition did you bring?

8 MR. WOODARD: Objection. He's got the gun.

9 THE COURT: Mr. Cantwell, did you have anything
10 with you on the night that we've been talking about other
11 than a flashlight and some pepper spray?

12 A No. I was told---

13 THE COURT: All right, that's fine.

14 A That UVA was a gun free zone.

15 THE COURT: That's fine. What's your next ques-
16 tion, Mr. Tracci.

17 Q Can you describe the size of the counter pro-
18 testers, the number?

19 MR. WOODARD: Objection, irrelevant. It's al-
20 ready been testified to be a bunch of people. We haven't
21 challenged it.

22 Q I don't think he's testified directly to his
23 perception of it.

24 THE COURT: He hasn't testified to it.

25 MR. WOODARD: Okay.

1 A I'm notoriously bad at estimating crowd sizes.
2 I'm worse than Donald Trump at this but I, I would, I don't
3 disagree with the assessments of your prior witnesses as to
4 the crowd sizes.

5 Q And how would you adjust them?

6 A Three hundred to five hundred? I'm sorry,
7 three hundred to fifty, somewhere around there. That
8 doesn't sound objectionable to me.

9 Q What are your views about the fighting abili-
10 ties of the counter protesters and left wingers generally?

11 A Well, they're very danger people so, you know,
12 it depends on which one you're talking about. I can't as-
13 sess the fighting skills of a group of people. It doesn't
14 work that way.

15 Q Did you make a statement about how it's likely
16 that when left wing groups and right wing groups get to-
17 gether that right wing people are going to kick their ass
18 because---

19 THE COURT: Mr. Tracci, it's the same line.

20 Q Yes, sir, Your Honor.

21 THE COURT: It's not relevant.

22 Q Now, you were talking about Mr. beanie man.

23 A Yeah.
24
25

1 Q And you saw video evidence and we've seen it
2 ad nauseum at this point, of him being on the ground and
3 then coming back up.

4 A Yeah.

5 Q From the ground.

6 A Yeah.

7 Q At that point you race into him, is that true,
8 with your, with your pepper spray?

9 A It doesn't seem that way to me. If you want
10 to show me on the video again, I'll look at it and I'll
11 tell you if that's the assessment. I perceive him coming
12 at me. That's my perception of it.

13 Q Your perception is that getting off the ground
14 is a lunge at you directly?

15 A As he's, he's springing up off the ground with
16 his hands and his knees bent. He's coming towards me, yeah.

17 Q And do you race toward him as a result?

18 A If you're saying that's me, I don't recall it
19 that way. I'm happy to review the video.

20 Q Does the Court wish to review the video at
21 this point?

22 THE COURT: I've seen the video.

23 Q Now, you testified that you brought a can of
24 pepper spray that you bought online?

25

1 A Yes. Police brand pepper spray, I bought it
2 on eBay.

3 Q Do you know how large is was?

4 A I mean, it was a key chain, I mean, it's, you
5 know, maybe this big. I do not know the---what's that?

6 MR. WOODARD: Dimensions?

7 A The dimensions. I---

8 Q Do you have the receipt?

9 MR. WOODARD: Somewhere. Not that big a deal.

10 A Well, I had forwarded an email copy of the re-
11 ceipt to my attorney, but it is a---

12 MR. WOODARD: And I've got it somewhere buried in
13 my file.

14 A But, I mean, it's not much bigger than a fin-
15 ger. I mean, a little bit wider. I mean, could I guess a
16 fluid ounce, I don't---

17 Q But you, had you deployed it before that even-
18 ing?

19 A I had never deployed it before that evening,
20 no.

21 Q But you deployed it enough time for it to be
22 empty, enough times for it to be empty? You ran it out?

23 A Yeah.

24 Q So that's multiple deployments?

25

1 A Well, I, as I said before, I've seen the video
2 and from the video it looks like multiple deployments. In
3 my mind I was dealing with a singular threat. It happened
4 very fast but yeah, I've seen the video and that's what it
5 looks like.

6 Q You indicated it was two groups of people that
7 hated each other.

8 A Yeah.

9 Q Were you one of those people who hated?

10 A Yeah.

11 Q You indicated that you were scared and you al-
12 so indicated that you are a person possessed of your own
13 wits and you don't lose control.

14 A Well, I indicated---

15 THE COURT: What's the---wait a minute. There's
16 no question before you yet.

17 Q Can you reconcile those two statements that
18 seem to be inconsistent?

19 A Well, when I fear for my safety I can deal
20 with the threat to my safety and I can deal with that
21 threat by using violence to deter it, but it's a threat
22 nonetheless and I get scared of people who threaten me,
23 yeah.

24 Q Did you describe the nature of the threat on
25 the radio a couple of days ago as the following, I could

1 have been like oh, there's violence erupting, I'd better
2 run away, right? I could have done the faggot pussy assed
3 thing a million different times and been in so much a bet-
4 ter position?

5 A Yeah.

6 Q So did that reflect in your mind legitimate
7 fear of your life and self-defense or just not being a pus-
8 sy or a faggot?

9 A It reflects that if I---

10 Q If you could just answer the question please?

11 A I'm trying to answer your question. The point
12 is that if I retreat every time I'm threatened, I'm never
13 going to be able to do anything because everybody hates me.
14 And so if every time somebody threatens violence I go away,
15 then I'm never going to do anything, so I do no run away
16 when I am threatened. And I, and my understanding of it is
17 that I don't have any obligation to do that in the State of
18 Virginia and if I did I never would have come here.

19 THE COURT: You've answered, you've answered.
20 What's your next question, Mr. Tracci?

21 Q You indicated at the bond hearing, I don't
22 have the transcript in front of me, Mr. Cantwell, that you
23 were backed up and had nowhere to retreat when sprayed by
24 beanie man.

25 A I was not sprayed by beanie man.

1 Q When---before you sprayed beanie man, sorry.

2 A Well, there are people behind me. I don't know
3 that I said I was backed---I don't recall that statement,
4 I'm sorry.

5 Q And the video shows the deployment not only
6 toward beanie man, directly to his face after he gets up,
7 it shows another one where you're sort of raising up and
8 who are you shooting at then?

9 A So, as I told you before, now I'm describing
10 to you what I saw in the video now, okay. In my mind I'm
11 dealing with the same problem. I don't recall that, okay.
12 Watching the video I see my guys come in and I'm pepper
13 spraying over their shoulder towards the threat that was
14 coming at all of us.

15 Q So who were you spraying?

16 A The counter protesters that were behind beanie
17 man coming at us.

18 Q Had you seen beanie man before?

19 A No.

20 Q In your life?

21 A No.

22 Q How would you describe him? How big was he?

23 A I'd say he was roughly my size.

24 Q Particularly strong?

25 A What?

1 Q Particularly strong looking?

2 A I mean, he was---I don't think the guy was a
3 lot bigger than me, no. He was roughly my size.

4 Q And when you see people with hands at their
5 sides, do you perceive that as an act of aggression?

6 A If they are bringing the hands up as he was,
7 yeah.

8 Q When you're getting up off the ground, you
9 probably have your hands where as you're rising?

10 A Well, depending on what you're doing you might
11 have them on the ground.

12 MR. WOODARD: Objection, calls for speculation on
13 getting up off the ground which are subject to millions and
14 millions of variations.

15 A And I think, if I recall correctly seeing on
16 that video you see his hand cocked back.

17 THE COURT: Mr. Cantwell---Mr. Cantwell--- He's
18 describe what he did. It's a matter of argument as to what
19 you think that shows.

20 Q I'm going to show you the picture here. Is
21 there any objection to that scene?

22 MR. WOODARD: No, not really. You know, it's got
23 politics on it, Judge. I'd object to that, but, you know,
24 we've been around the block on that. It's not that big a
25 deal. Thank you. That's fine.

1 THE COURT: No objection to that.

2 Q Is this you?

3 A That's me.

4 Q What is the flashlight for exactly.

5 A The flashlight?

6 Q Yeah.

7 A I took the flashlight because we were marching
8 through a dark area. Everybody else had torches, I had a
9 flashlight.

10 Q You were using it to blind people, weren't
11 you?

12 MR. WOODARD: Objection.

13 A I don't think that that would have worked out
14 very well, frankly.

15 Q You weren't trying to---

16 THE COURT: Wait a minute, wait a minute.

17 There's an objection. I've got to hear the objection.

18 MR. WOODARD: Objection, Your Honor. There's ab-
19 solutely no evidence that he was doing that.

20 Q I'm asking the question.

21 MR. WOODARD: Okay.

22 THE COURT: You can answer that one.

23 A No. I don't even think that would work.

24 Q Did you ever shine your flashlight in the eyes
25 of counter protesters that night?

1 A I mean, it was shining at eye level, yeah.

2 Q Were you---did the video ever support an in-
3 terpretation of you deliberately using the flashlight---

4 MR. WOODARD: Objection, Your Honor. He is not
5 charged with causing photonic discomfort to the protesters
6 and making their pupils dilate or undilate.

7 A Could I---

8 MR. WOODARD: Be quiet. Okay. He's charged with
9 pepper spraying somebody. Whether he had a flashlight and
10 whether he shined it at people is utterly irrelevant.

11 THE COURT: There's an argument of self-defense.
12 Mr. Tracci is asking whether or not he did something that
13 was (unintelligible).

14 A I don't have any recollection of that. What I
15 can say is that I'm aware that that flashlight can be used
16 as a weapon, but I think of it as a striking instrument and
17 not something that's going to blind people. It's not that
18 bright.

19 Q And you described how you became agitated that
20 the, some of the counter protesters were trying to knock
21 the tiki torches, is that what you said?

22 A That doesn't ring a bell to me.

23 Q Did you just testify as to something that
24 was---

25

1 A I'm sorry, yes. As we were walking towards,
2 yes. They were trying to bump into the, to the marchers,
3 yes.

4 Q What are you holding here, do you think?

5 A That's the pepper spray.

6 Q And did you have that out the whole time?

7 A No. That was when I---I put my hand on my
8 pepper spray. I had it on like a, it's on my key chain and
9 I had it clipped to like a belt loop thing with a retracta-
10 ble thing, okay, and so as we approached the counter pro-
11 testers at the, at the Jefferson statute, since I was not
12 expecting to see them, and I was afraid of them, I put my
13 hand on my pepper spray then.

14 Q The video that we've all seen with Mr. Goad
15 and beanie man, was that the first encounter you remember
16 having with them?

17 A With beanie man, yeah.

18 Q So earlier that evening you can't recall
19 stalking them or moving after them as they moved with you
20 with pepper spray and your hand just like this?

21 A I mean, we circled the rotunda---I'm sorry,
22 the statute, but like not before---are you talking about
23 before? I'm not sure I understand your question. I'm sor-
24 ry. I'm genuinely trying to answer you. When we came down,
25 we all went around like this.

1 MR. WOODARD: Let him, let him clarify the ques-
2 tion before you answer.

3 Q The first interaction you had with beanie man,
4 are you testifying, is it your testimony your first inter-
5 action with beanie man is when you deployed mace at his
6 face after he got up off the ground?

7 A No, that is not my---no. He was in front of
8 us, both sides were chanting. I saw him chanting. I saw
9 him fighting and the first time I engaged him, yes, was
10 when I pepper sprayed him, but I saw him before that.

11 Q And what was that interaction that you had be-
12 fore that?

13 A I'm sorry, my only interaction, my first in-
14 teraction with beanie man was when I pepper sprayed him.
15 I'm saying I was aware of his presence when he was fighting
16 with tank top.

17 Q Now, when you sprayed beanie man, had you been
18 sprayed?

19 A No.

20 Q And you testified to that at the bond hearing,
21 is that true?

22 A I'm sorry, what?

23 Q You had testified to that at the bond hearing.

24 A I testified that I had not been sprayed when I
25 sprayed beanie man, that is accurate. I did spray him be-

1 cause I thought he was going to spray me---I sprayed him
2 because I thought he was going to punch me.

3 Q Thank you. Those are my questions.

4 THE COURT: Mr. Woodard?

5

6 REDIRECT EXAMINATION

7 By: Mr. Woodard

8 Q How many fights have you been in this year,
9 fistfights?

10 A This year, just the one.

11 Q The one here in Charlottesville?

12 THE COURT: Is that relevant? Is that relevant?

13 Q I would say it counters, it counters the mal-
14 ice, but I'm not really going very far with it.

15 A If I wanted violence, it's not difficult for
16 me to find. I get threatened all the time.

17 THE COURT: You don't have to, you don't have to
18 answer that. I'm not interested in how many fights you've
19 been in. All right, Mr. Woodard, what's your next ques-
20 tion?

21 Q All the weapons and stuff you carry that is
22 for self-defense, right?

23 A I sure do.

24 Q Why?

25 A Because I get threatened frequently.

1 Q Okay. Who threatens you?

2 A People who don't like my politics or my way of
3 describing current events.

4 Q Have you gotten death threats?

5 A Oh, yeah. I have an episode---

6 THE COURT: That's already been---

7 Q You've answered the question. Answer the
8 question.

9 A Yes. I receive death threats on a regular ba-
10 sis, threats of violence on a regular basis.

11 Q Mr. Cantwell---

12 THE COURT: You don't need to answer.

13 Q Be quiet. Now---no, I'm not going to do it.
14 Those are the questions. Officer Pleasants is my next wit-
15 ness and he's going to be short.

16 THE COURT: Thank you, Mr. Cantwell. You just
17 need to have a seat.

18

19

20 **SERGEANT BRADLEY PLEASANTS**, having been duly
21 sworn testified as follows:

22

23 DIRECT EXAMINATION

24 By: Mr. Woodard

25 Q Good afternoon. You're Officer Pleasants?

1 THE COURT: Mr. Woodard, are you going to need
2 this? I can't, I can't see counsel.

3 Q I might. We can move it back.

4 THE COURT: That's even better.

5 Q I think the chances are slim, but I don't want
6 to break it down yet.

7 THE COURT: Yeah, if you could just move it to
8 the side. If you need to bring it back, certainly do but
9 it's better than trying to dodge---

10 Q Okay. You are Officer Pleasants?

11 A Sergeant Bradley Pleasants.

12 Q Sergeant Pleasants, okay.

13 A Yes, sir.

14 Q And we're going to have to go through this.

15 Now, we've spoken before, right?

16 A Sure.

17 Q And we're going to have to go through this
18 again. You are with the City of Charlottesville police de-
19 partment?

20 A That is correct, sir.

21 Q Okay. There we are. And you were out there
22 on August 11th, right?

23 A That is correct.

24 Q And did there come a time when Emily Gorcenski
25 approached you?

1 A She did.

2 Q Okay. Now, let's go back. How long have you
3 been a police officer?

4 A Since the fall of 2008.

5 Q Okay. And, and during that time have you ever
6 had any training on the effects and use of pepper spray?

7 A Yes.

8 Q Let's go to the use of pepper spray. In your
9 experience what is the range of cheap pepper spray?

10 A I mean, that's completely dependent upon the
11 type of carrying agent that it's in, the delivery method.

12 Q Five hundred (500) feet?

13 A No.

14 Q Okay. Ten feet?

15 A I mean, if we're talking a small hand held can
16 of pepper spray---

17 Q The small cheap stuff.

18 A From you to me, ten feet, maybe a little fur-
19 ther.

20 Q Okay. And what about---there's a word for it
21 but it's been a long day and I don't remember it. What
22 about the dissipation from that? For example, if you shot
23 me with pepper spray---

24 A Correct.

25 Q Could they smell it in the back of the room?

1 A Absolutely.

2 Q Okay. Would they suffer anything more than
3 smelling it? The smell goes everywhere, right?

4 A Once you've been exposed to the smell, it's a
5 smell I'll never forget. I can tell, you know, probably
6 from much further than the back of the room if it's been
7 deployed. There's a whole lot of factors in that, the wind
8 direction, whether or not you're in a contained area, an
9 open area and how much a person suffers on it is entirely
10 dependent. Some people have awful reactions to it.
11 There's a very small percentage of the population who is
12 immune to it, so to speak.

13 Q Okay.

14 A It has no effect.

15 Q Is there, is there any way to tell---let's say,
16 you know, he and I both pepper spray that direction---

17 A Those are two different directions.

18 Q Yeah, two different directions.

19 A Okay.

20 Q Is there any way you can, that you know of
21 that somebody can determine which one of us, which one of
22 our pepper sprays is affecting you or your smelling?

23 A I mean, if the wind were blowing I would say I
24 could venture a pretty good guess, but probably not for
25 sure.

1 Q Okay. So if somebody were, let's say in this
2 room and there were five different people pepper spraying,
3 it would be impossible to figure out who was smelling what,
4 right?

5 A I mean, unless you saw the person spray you in
6 the face with it, for example, then yeah.

7 Q Okay. Now, let's go back to August 11th.
8 Charlottesville's finest came out there and established a
9 one rank line?

10 A Eventually, yes.

11 Q Okay. And I believe Ms. Gorcenski came up to
12 you?

13 A She did.

14 Q And what is your recollection of what she
15 said?

16 A She approached. She had a camera. She was
17 initially complaining that we had been staged across the
18 street and in her opinion didn't do anything about what was
19 going on. I'm sorry. And then she began wanting to know,
20 walking down the line filming all the officers wanting to
21 know who was in charge, and I ultimately told her that I
22 was in charge.

23 Q And that was you?

24 A That was me.

25 Q Okay, yeah.

1 A And when I did, she came up, because I didn't
2 tell her who I was, I just told her that I was the person
3 that was in charge. She came up and read the name tag off
4 of my uniform and said my name out loud and made some ref-
5 erence to some interaction that I'd had with her or someone
6 she knew years ago that I'm not familiar with. I don't
7 know what the context of that was.

8 Q Did she call you a douchebag?

9 A I don't---she said a lot of stuff. I don't
10 remember.

11 Q Okay. And at what range did you-all interact?
12 Was it, you know, feet?

13 A Feet. It was pretty---the furthest probably
14 ten feet and then like I say, it was dark and she came up
15 close enough to read the name tag on my uniform.

16 Q What's your knowledge of the effects of pepper
17 spray?

18 A I know what it does to you.

19 Q Okay. And how long have you known that, since
20 2008 when you started or thereafter?

21 A Before that, 2005.

22 Q Okay. And with your knowledge of the effects
23 of pepper spray and with Ms. Gorcenski, did it appear to
24 you at the time she was under any effect of pepper spray?

25 A No, it didn't.

1 Q Answer any questions Mr. Tracci may have.

2 A Sure.

3

4 CROSS-EXAMINATION

5 By: Mr. Tracci

6 Q You testified that pepper spray can affect
7 people differently?

8 A Absolutely.

9 Q Can some people withstand a blast directly to
10 the face without much side effect?

11 A They can.

12 Q What is your experience with pepper spray?

13 A Like I say, it's different. If someone gets
14 blasted directly in the face with it typically what you see
15 is near incapacitation of the person. I know of people who
16 have been sprayed with it who have had little to no effects.
17 There are other people, like I say, can just be downwind of
18 it or maybe in the same room that have a terrible reaction
19 to it. Other people will have little to no reaction.

20 Q Is it fair to infer that when someone observes
21 in your experience an aerosol mist of mace that that mace
22 might affect them if it moves in their direction?

23 A Certainly.

24 Q And could it be a small amount that causes
25 that---

1 A Oh, certainly.

2 Q Impairment?

3 A Yes.

4 Q And what are the physiological manifestations
5 of that impairment?

6 A It's usually, one of the main ones is involun-
7 tary closing of the eyes. It also gives you the sensation
8 that you can't breathe and typically any sort of mucus or
9 whatever you have in your head often finds its way out.

10 Q And there are gradients of that.

11 A Yes.

12 Q It could go from---and describe if you would
13 the three worsts, you know, from least to words impairment.

14 A Well, I mean, for someone who is, who has only
15 been exposed to a little bit, it doesn't have a very bad
16 reaction. It could be just a tingling to the skin or eyes
17 or maybe a little coughing all the way to like I said that
18 night I saw people after the fact who were actually laying
19 on the ground with people throwing water or saline in their
20 eyes trying to alleviate the, what I can only assume is the
21 burning sensation that they were feeling.

22 Q And at what point in the evening did you see
23 Ms. Gorcenski?

24 A In between the initial, what I only know is
25 some sort of disorder that broke out around the statute in

1 front of the rotunda, in between when that happened and
2 when the unlawful assembly was declared and everyone was
3 removed from the area of the rotunda.

4 Q Could she have suffered from inhalation after
5 you saw her?

6 A Sure. Like I say, I wasn't there. I'm not
7 sure what happened to her or when, so I couldn't say.

8 Q No further questions.

9

10 REDIRECT EXAMINATION

11 By: Mr. Woodard

12 Q All you-all police showed up more or less to-
13 gether, right?

14 A No.

15 Q Okay. Well, I'm sorry, was there any brawling
16 going on when you showed up?

17 A No, sir.

18 Q Okay, everybody was relatively calm.

19 A There were still a lot of people milling
20 around, but we had been asked to respond by the University
21 Police Department. And when I got there I was awaiting di-
22 rection from their supervisor who had asked for our assis-
23 tance to find out what exactly they needed from us.

24 Q And Officer Bryant and Officer Clyburn or is
25 it Clymore?

1 A I think it's Clymore.

2 Q Okay, me too. They are UVA police?

3 A They are.

4 Q Did you see them there that night?

5 A I don't think so.

6 Q Okay. Now, smelling pepper spray isn't inju-
7 rious to you is it? I mean, if you get blasted but if you
8 just get a whiff of it it's no big deal.

9 A It brings back some painful memories but
10 that's about it.

11 THE COURT: Sergeant, in some of the questions
12 they've asked you about mace and some about pepper spray.
13 Are you making a distinction between the two?

14 A They both have similar effects. I know they
15 are technically different things.

16 THE COURT: But in your answers, again, some
17 questions they've asked you about mace and some have asked
18 you about pepper spray. Should the Court receive your tes-
19 timony as it doesn't make any difference which one it is?

20 A For the purpose of what we're talking about,
21 no, not really. I was basing my answers with pepper spray
22 in my mind. I didn't even realize someone said mace. I'm
23 sorry.

24 THE COURT: Go ahead.

25

1 Q So, I mean, people smell it and you cough.
2 People cough all the time from it, right?

3 A Yes, that's accurate.

4 Q That's not, that's not a kind of injury that
5 needs treatment, correct?

6 A I mean, again, it completely depends on the
7 person. It depends on people, people react differently.

8 Q That's all my questions.

9 THE COURT: Mr. Tracci?

10 MR. TRACCI: No, sir.

11 THE COURT: Thank you, sir.

12 A Thank you.

13 MR. WOODARD: Thank you, Officer Pleasants. May
14 I confer with my client? Okay, Ely. One more.

15
16 (Conversation about releasing witnesses.)

17
18 THE COURT: You're under oath. Go ahead.

19
20
21 **ELLIOTT CLINE**, having been duly sworn testified
22 as follows:

23
24 DIRECT EXAMINATION

25 By: Mr. Woodard

1 Q Can you state your name, please?

2 A My name is Elliott Cline, but I go by Ely
3 Mosely.

4 Q Okay, and were you present on August 11th in
5 Charlottesville at the monument?

6 A Yes.

7 Q Okay. Did there come a time that you were
8 with Chris Cantwell?

9 A Yes, before the event.

10 Q All right. Yes, is the answer.

11 A Yes.

12 MR. TRACCI: One of the defense witnesses is back
13 in the courtroom.

14 THE COURT: He was released.

15 MR. TRACCI: He was just released?

16 THE COURT: He was released after he testified.
17 Sir, you're welcome to stay or go as you wish. You're re-
18 leased from the subpoena.

19 WITNESS: Thank you, Your Honor.

20 Q Okay, you were with him?

21 A Yes.

22 Q Did there come a time when he was in physical
23 distress?

24 A Yes.

25 Q Okay, and when did that begin?

1 A When we got down to the monument we were basi-
2 cally around the monument area. About five minutes into
3 that or so, maybe a little bit less there was kind of like
4 a scuffle and it happened right over my left shoulder and I
5 turned around and I kind of saw the scuffle going on. We
6 were trying to break it up. I was one of the people that
7 was kind of leading this, so I was trying to keep people
8 apart, keeping no one from kind of getting violent or any-
9 thing like that, so I was trying to break everything up.

10 Q Okay. Were any of the counter protesters
11 leaving?

12 A Leaving?

13 Q Yeah.

14 A No, they were all like staying together and
15 basically like we, when we got there we were surrounding
16 them. They were like trying to hold that ground around the
17 monument.

18 Q What would have happened if they tried to
19 leave, do you know or---

20 A I think that they would have been able to get
21 right through if they were to walk right through kind of
22 the crowd.

23 Q Okay.

24 A I definitely would have let them go through if
25 I had been hey, can we let guys through.

1 Q Right.

2 A I would have been able to control our guys to
3 get them out of there.

4 Q Okay. There came a time when Mr. Cantwell was
5 distressed. My understanding is it's near a park bench.

6 A Yes. It's, yeah---

7 Q Tell me what Mr. Cantwell appeared---tell me
8 what was going on with Mr. Cantwell at that time.

9 A So it was after I guess the little scuffle
10 broke out. The pepper spray went out. I don't know like
11 what was going on with it, but there was like a park bench
12 to the side of the statue where people were kind of gather-
13 ing that had been sprayed and the police were helping out
14 and a couple of our guys that had medical equipment or like
15 milk and things like that were getting, getting it out of
16 people's eyes. There was like several people there, proba-
17 bly like I don't know, seven or eight people who were just
18 getting like pepper spray and things like that out of their
19 eyes.

20 Q Okay. What were they doing to him?

21 A Well, he was trying---they were trying to get
22 it out of his eyes, but everyone was like around crowding
23 him, like press was as well as some of the like counter de-
24 monstrators were also like screaming at us and things like
25 that while we were trying to like, you know, basically per-

1 form like medical treatment like from, if you were like in
2 the military or something on some of our guys. And it
3 wasn't just our guys, it was also theirs. And theirs were
4 basically being left alone, but they were like screaming at
5 our people while they were trying to get stuff out of his
6 eyes and other people's eyes as well.

7 Q Did he have a shirt on?

8 A No, I don't think he had his shirt on. I
9 think he had---his shirt was off when he was getting the
10 stuff out of his, out of his eyes.

11 Q Okay. You know, what was his reaction to the
12 pepper spray?

13 A I think it might have been the first time he
14 was pepper sprayed. I've been pepper sprayed before, so
15 I'm kind of---I had some in my eyes but it wasn't like di-
16 rect contact so I was used to it a little bit, but I could
17 tell it was kind of probably his first time and he was just
18 like worried about getting it out. Also, they were asking
19 for like water. And like that's not a good way to get pep-
20 per spray out of your eyes is like putting water in. So
21 people were using like milk and like mixtures with like
22 this calcium kind of mixture and things like that.

23 Q Answer any questions Mr. Tracci might have.
24
25

CROSS-EXAMINATION

By: Mr. Tracci

Q How long have you known the defendant in this case?

A I actually met him at the Friday night rally.

Q You indicated that the protestors surrounded the counter protestors? Your testimony was you surrounded them?

A Yeah, like when we got down to the area it was like around that kind of the base of the statue they were kind of around.

Q And that they, quote, held their ground?

A Yes.

Q Could they have escaped through or over the statue in your view?

A I don't know what you mean by that.

Q Could they have escaped if they wanted to retreat and it's a circular statue, the rotunda statue, is that correct?

A Yes. So they were like around, like if this is the statue, and it is a circular base and they were linking arms around the base of the statue. However, if they wanted to get out, I would have, because like I said, I was part of leading the scene, they would have easily been able to just say hey, and I would have yelled let they

1 through, make a hole, and they would have been able to get
2 right out.

3 Q Were you the sole guardian as to who could
4 egress and remain?

5 A No, I wasn't. There was several other people
6 that could have had the ability to do this as well.

7 Q Are you aware if other people sang fill in to
8 prevent them from leaving?

9 A No, I did not hear that.

10 Q Did you see any of the interaction between the
11 defendant and who has been described as Mr. beanie man that
12 evening?

13 A I know like the guy with the beanie, I remem-
14 ber seeing him and he was like really kind of like scream-
15 ing back and forth, but I didn't see the actual conflict or
16 anything like that.

17 Q You didn't see any of the conflict or anything
18 like that?

19 A I saw the tail end. Basically what happened
20 was I had walked past them and I saw that they were scream-
21 ing at each other, and then I saw, turned around and I saw
22 a scuffle and I didn't know like what was going on. I was
23 just pushing people away to keep the violence from going on.

24 Q So you didn't see what happened immediately
25 preceding.

1 A Well, I saw the scuffling going on, but I
2 didn't, it wasn't like I knew, oh, that's that person, this
3 is this person. I immediately got between it to separate
4 them. So I know that there was like several different
5 counter protesters and several different of our guys who I
6 was just getting between them and pushing them aside. And
7 that's, like I don't know which ones were which people, I
8 was just trying to get them aside from each other, just
9 getting people separated.

10 Q Thank you.

11 MR. WOODARD: That's all.

12 THE COURT: Thank you, sir. You're free to go.

13 MR. WOODARD: Oh, yeah. One final question.

14

15 REDIRECT EXAMINATION

16 By: Mr. Woodard

17 Q One final question. When he was, when Chris
18 was at the park bench, was he trying to run away or flee
19 law enforcement?

20 A Absolutely not. Actually what happened was we
21 made---I stayed with him there to make sure that the, the
22 stuff was out of their eyes and that he was good to go.
23 And then we all walked back together to Nameless Field so I
24 was like one of the last people with him and we weren't
25 like running from the police. The police were actually es-

1 corting with us. They were right next with us. They
2 weren't like leaving, or we weren't running or anything
3 like that. We just like all walked back together after the
4 stuff was cleared out of the eyes. And he, you know, he
5 was still throwing stuff in his eyes as he was walking or
6 whatever, but, you know, once we were able to move we moved
7 out of there.

8 Q That's all.

9 THE COURT: Any other questions, Mr. Tracci?

10 MR. TRACCI: No, sir.

11 THE COURT: Free to go.

12 MR. WOODARD: That's our case, Judge.

13 THE COURT: All right. Mr. Tracci, any other ev-
14 idence?

15 MR. TRACCI: We have no other evidence, Your Hon-
16 or.

17 THE COURT: Do you want to be heard?

18 MR. TRACCI: We do, Your Honor. We'll just go
19 through. Both statutes, 18.2-52, malicious bodily injury
20 caused by means of caustic substance or agent, the elements
21 are maliciously, a person who maliciously causes bodily in-
22 jury to another by means of acid, lye or caustic substance.
23 There's no question that Mr. Cantwell deployed a caustic
24 substance. The case law is very clear that the Common-
25 wealth has discretion as to whether to charge mace or caus-

1 tic substance or pepper spray. That's the Foster case and
2 the Somerville case as well and the Court heard argument on
3 that. There was testimony from Mr. Goad and Mr. Gorcenski
4 that they suffered. They were impaired as a result of the
5 deployments that were directly attributable to Mr. Cantwell.
6 The first deployment was clear deployment on video, was to-
7 ward Mr. beanie man after he got back from the ground.
8 Again, the question of what he's doing, the victims of the
9 case described him as standing there is a defensive pose,
10 arms at side and Mr. Cantwell moved in his direction and
11 sprayed him directly in the face. When he was sprayed di-
12 rectly in the face the evidences shows and the testimony
13 confirms that Mr. Goad was affected by that secondary re-
14 coil and he testified to those effects on him.

15 With respect to the 18.2-312 charge, the ele-
16 ments are malicious release of gas in a public space. We
17 have that as well. Tear gas, mustard gas or phosgene capa-
18 ble of injurious odors. We have that based on the testimo-
19 ny of the victims who also testified that other people were
20 affected in a similar way and impaired by whatever Mr.
21 Cantwell was deploying, producing bodily injury. Now, the
22 only question is malice. And malice is defined through the,
23 I think the Court has this already, I might have submitted
24 this, is the intentional doing of an unlawful act, a wrong-
25 ful act to another without legal excuse or justification at

1 a time when the mind of the actor is under the control of
2 reason. Malice may result from any unlawful or unjustifia-
3 ble motive including anger, hatred or revenge. It may be
4 inferred from any deliberate, willful or cruel act against
5 another, however sudden. The testimony would certainly
6 support the proposition and the video as well, that the act
7 here was malicious. It wasn't justifiable. There was no
8 reasonable self-defense claim and it wasn't excused. That
9 testimony comes from Mr. Goad, from Ms. Gorcenski and the
10 video. Frankly it also comes from Mr. Cantwell. He ex-
11 plains how he hated the protesters. He said it was two
12 groups of people who hated one another. And as the jury
13 instruction indicates, malice may result from any unlawful
14 or unjustifiable motive including anger, hatred or revenge.
15 He was mad. He was mad that people were disturbing his
16 ACLU sponsored protest. He had his mace ready to go. He
17 had his flashlight ready to go and he looked for any provo-
18 cation or pretext to utilize that mace and he found one
19 with a guy who had been pushed onto the ground. He raced
20 over, no threat to him, clear opportunity to withdraw. He
21 didn't want to be, as he put it a pussy or a faggot, so he
22 ran up and maliciously deployed mace directly in someone's
23 face. That malicious deployment directly injured that in-
24 dividual without excuse or justification as well as Mr.
25 Goad. Seconds later no threat to him, he decides to indis-

1 criminally spray over a group of people behind beanie man.
2 If malice hasn't been met, and it certainly has, it's
3 clearly unlawful because it's grossly disproportionate to
4 any reasonable threat posed to him at that time in an envi-
5 ronment where even, according to his estimate, the counter
6 protesters were outnumbered dramatically by the protesters.
7 There's a question of intent and we would suggest here that
8 notwithstanding the fact that beanie man is not here and
9 the Commonwealth attempted to bring him here and the testi-
10 mony reflected that, that malicious intent transfers from
11 beanie man to Mr. Goad, to Gorcenski and other people who
12 were there. Those are the elements. We've met those ele-
13 ments. We have exceeded those elements. And, Your Honor,
14 I just want to remind everyone here that this is a prelimi-
15 nary hearing. His is not a trial on the merits. Very
16 clear, the Supreme Court has held that the purpose of a
17 preliminary hearing is essentially a screening process to
18 determine whether there is sufficient cause for charging
19 the accused. That is, whether reasonable ground exists to
20 conclude a crime has been committed and the identity of the
21 accused. We know who the identity of the person deploying
22 mace in the video and after appearing in front of the wit-
23 nesses is. It's the defendant, uncontested. He admitted
24 it. He actually admitted to deploying an entire can that
25 he had never utilized before that evening and that's Moore

1 v. Commonwealth. Reasonable ground exists to conclude a
2 crime has been committed. You've heard the elements.
3 We've met the elements. You've heard the malice, clearly
4 supported by the evidence in this case and the jury in-
5 struction that we heard. We've heard evidence about a lack
6 of excuse or justification. The only questions that we've
7 heard today go to proof, credibility, bias, other issues
8 squarely within the ambit of the trier of fact, not this
9 Court. So this is not a question of guilt beyond a reason-
10 able doubt under Foster v. Commonwealth. It is an effort
11 to ascertain whether there's sufficient cause to proceed
12 forward. We have met and exceeded that burden. Now, we
13 allowed other people to testify. Their testimony was in-
14 conclusive. The defense witnesses were inconclusive. Many
15 admitted bias toward the defendant. Others indicated they
16 had no idea what was going on. Others indicated their only
17 recollection of the offense is predicated on their experi-
18 ence that night in a completely chaotic situation. I would
19 submit and the Commonwealth would submit that that testimo-
20 ny should be accorded the credibility and weight it de-
21 serves and that's virtually none whatsoever. The fundamen-
22 tal question here, Judge, is malice or unlawful utilization
23 of pepper gas, pepper spray that the defendant acknowledges
24 using on more than one occasion. The testimony of the Com-
25 monwealth witnesses were much different from the testimony

1 of the defense witnesses. That's precisely what goes to
2 the purpose of a trier of fact in this case. We have met
3 our burden. We've exceeded it and I ask that you certify
4 all three charges.

5 THE COURT: Mr. Woodard.

6 MR. WOODARD: I disagree, Your Honor. The situa-
7 tion is this. Using statements that were false the Common-
8 wealth arrested this man. He's been sitting in jail for
9 over two months. And a week ago the Commonwealth found out
10 that the identification of this man on one of those charges
11 was absolutely false. And yesterday they told me, oh, by
12 the way, I think I talked to Mr. Goad, I think it's pretty
13 clear that his problem was with a gel mace spray. There's
14 not a single mention of any of this other stuff. And I
15 think I brought out how the Commonwealth came up with that
16 as a backup plan when their main charge went out the window
17 because their client had lied--I'm sorry, because their
18 witness had lied. Now, Mr. Tracci doesn't seem to under-
19 stand and I've got to tell you this is common with every
20 Commonwealth's Attorney I've ever found. Not a single one
21 of them believes that self-defense exists. Self-defense
22 only applies to the 52 charge, because it's not actually in
23 the statute, but it's the same thing as what's in the 312
24 statute. In the 312 statute it says, without legal justi-
25 fication. And Mr. Tracci would have you believe that there

1 is some reasonable ground for this. It's not. When it
2 comes to self-defense, it is not what Mr. Tracci thinks is
3 reasonable, it's not what you think is reasonable. It's
4 not what he thinks is reasonable, it's not what I think is
5 reasonable. It's what's in that man's head at the time.
6 It's what's in that man's head at the time. If he thinks
7 he is in imminent danger of fear or bodily harm, then he
8 gets to react and that's what he did. He reacted in a pro-
9 portional response because Mr. Cantwell, would you stand up
10 for me? He is not the God of Sheba with eight arms. He
11 can't fight that mob that was coming to him. Sit back down.
12 When all these guys are coming at me I'm going to lose to
13 two of them because I only got two fists, and he's only got
14 two fists and beanie man and goad were coming at him to-
15 gether which means he automatically loses. Now, he's got
16 the flashlight, but he doesn't do that. He uses the pepper
17 spray because the flashlight could be more damaging than
18 the pepper spray. He chose one level up under Diffendal v.
19 Commonwealth and that is justification. Again, it's what's
20 in his mind. It's he gets to determine what the threat is,
21 and he did that. And of course the Commonwealth called
22 people who were far, far away saying oh, we were all being
23 peaceful. Really? Our evidence is that beanie man was
24 screaming at people. Our evidence is that beanie man who
25 got sprayed in the face was continuing to riot through the

1 next couple of minutes at least. Everybody that got
2 sprayed in the face except him was continuing to riot and
3 they come in there and say oh, I felt a tingling in my nose.
4 Officer Pleasants described what it is with involuntary
5 shutting of eyes. Well, you watched Emily and Goad both
6 walk all over the place. If there was a temporary loss of
7 vision they should have been bumping into the monument or
8 tripping over somebody. Of course, they want to say I felt
9 tingling because they're counter protesters or they're pro-
10 testers. Whichever one they are, he's the opposite. Ms.
11 Gorcenski is the key here. She stalked him all Friday and
12 she got into the mess of the thing and after that, that
13 very night she got on there and started, showed up the next
14 morning saying it was Chris Cantwell who sprayed me. It
15 was Chris Cantwell who sprayed me. Why did she know it was
16 Chris Cantwell? She had been stalking him. Why did she go
17 there the first thing the next morning? Because he was
18 supposed to be a speaker at ten. That's why it was so im-
19 portant. And then Ms. Gorcenski sat there and said oh yeah,
20 I communicated with Goad. Well, despite his equivocation,
21 who do you think identified Cantwell to Goad? It was
22 Gorcenski, and they both admitted communicating with each
23 other. They're not going to admit what they said, because
24 I can't prove otherwise, but it doesn't take a rocket sci-
25 entist to figure it out. What boiled down here is Gorcen-

1 ski has an ax to grind with Mr. Cantwell. She came up with
2 this charge to get him politically and then she and Goad
3 conspired because the Commonwealth had only charged him
4 with unlawful. Those are only class six felonies. But she
5 wanted a class three, so she got Goad to come down here and
6 lie to the Commonwealth and say it was Chris Cantwell.

7 MR. TRACCI: Your Honor, I know this is argument,
8 but I must respond to the allegation that the Commonwealth
9 conspired with the victims in this case.

10 MR. WOODARD: No, I didn't say you-all conspired.
11 It was Goad and Gorcenski conspired. Goad and Gorcenski
12 were conspiring to get a class three felony against him and
13 Judge, it worked. The first day I walked into this court
14 Mr. Tracci moved to amend the charges from unlawful to ma-
15 licious. And now he's coming in here saying oh, we can
16 prove unlawful or malicious. He's the one who jacked it up
17 to malicious. Why is he now saying he only has to prove
18 unlawful? Because he wants them certified, Judge. Mr.
19 Cantwell has the right to get on that stand and say I was
20 scared to death and that's why I used this weapon and that
21 is legal justification under the statute. That's legal
22 justification under 312. That also negates any malice be-
23 cause if I'm terrified I'm not thinking in cool deliberate
24 reason. I'm not going to say oh, I'm going to pepper spray
25 this gentleman because I don't like his shirt. But Judge,

1 if he's coming at me, if he's coming at me I'm sure going
2 to resist him. but I may not because he's a police officer,
3 but if somebody else is, I'm going to resist him, I have
4 the right. And if I resist a police officer, I get to say
5 Judge, Bailiff Woods is coming at me with his inflatable
6 baton and so yeah, I kicked him in the shin or whatever I
7 did. It's his, that's the right everybody has. Self-
8 defense exists in this state. It's existed since the first
9 people got here and it doesn't just exist in this courtroom
10 and it doesn't exist in the circuit courtroom. It exists
11 out there where people are fighting each other and they're
12 fighting each other to put the other people in jail because
13 they want to win politically. And a man should not have to
14 rot in jail for six months before his claim of self-defense
15 is adjudicated. But that's what's going on here. He de-
16 fended himself against attacker and he's been rotting in
17 jail for two months. I'm absolutely appalled. He was le-
18 gally justified to use the force he did. There is no mal-
19 ice because, and he testified it popped on him all of the
20 sudden, holy smokes, I'm in the middle of a brawl. There's
21 no malice. The legal justification makes it lawful, makes
22 it a lawful use of force. It's fully justified. We ask
23 that none of them be certified.

24 THE COURT: Mr. Tracci.
25

1 MR. TRACCI: Your Honor, I think the Commonwealth
2 has been clear that malice can be inferred by words from
3 the defendant's mouth. He hated, he was mad, he was angry.
4 He also testified that he was not out of control. He's a
5 man who had his wits about him because he can proportion-
6 ately respond to violence when he sees it because he's ex-
7 perience it before and he does have self-control and meas-
8 ure of self-control. I asked that question and he said di-
9 rectly, yes. We have demonstrated that the defendant met
10 our burden of showing that the defendant exercised that de-
11 cision not under the heat of passion. He was there, he was
12 in an environment that was a little chaotic, but he also
13 said that he doesn't lose control and that he didn't that
14 night. He said he was scared but it wasn't blind rage and
15 it wasn't a lack of control or capacity as to what he was
16 doing. We never heard any evidence like that. Malice is
17 very clear, as we said, can be inferred by actions. It's
18 the deliberate doing of an unlawful act. We saw Mr. beanie
19 man come up, get sprayed in the face for merely rising with
20 his hands at his side. That's not any justification. Mr.
21 Cantwell raced over to him, pepper sprays him, pepper maced
22 him directly in the face affecting him and other around him.
23 Frankly, that is a question as the Commonwealth has indi-
24 cated that ultimately ought to be decided by a trier of
25 fact hearing all of these witnesses, giving the Common-

1 wealth an opportunity to present that evidence in a proper
2 setting to determine guilt or innocence beyond a reasonable
3 doubt. For purposes of this hearing we have met and ex-
4 ceeded our burden and I respectfully ask that you certify
5 these charges.

6 THE COURT: At the beginning of the hearing today
7 there was a motion to take up a matter outside of the pub-
8 lic. That motion was made by Mr. Woodard and it was done
9 in the Court's view out of an abundance of caution as to
10 how to address the issue. The cases which could be heard
11 in the public, but without the Court having the information,
12 the Court had to conduct the hearing. At the hearing there
13 were certainly things that are relevant to this case, but
14 the Court upon review doesn't find any reason for it to be
15 a secret. So nothing will be sealed from that hearing.
16 There was a court reporter present. The Court always does
17 that so that whatever the Court does or whatever is said,
18 it can be viewed by anybody that wants to view it. So
19 there's a recording and there can be a transcript of that,
20 of that hearing, but none of it will be sealed at this
21 point.

22 In regard to these three charges, the first one
23 where Mr. Goad is the complainant who went and obtained a
24 criminal warrant, this gets to the issue of this hearing.
25 In the hearing Mr. Woodard provided the Court with an email

1 from Mr. Tracci and my comments here are not to be con-
2 strued by anybody as any condemnation of Mr. Tracci. What
3 Mr. Tracci told Mr. Woodard yesterday in this email which
4 is part of our record, is that Mr. Goad is no longer cer-
5 tain that the direct deployment of gel pepper spray as he
6 describes in his complaint resulted from action by Mr.
7 Cantwell. In fact, it was indicated it was the result of
8 action by another individual. This warrant that, one of
9 the three that I'm trying, a violation of 18.2-312 is based
10 on a statement signed by Mr. Goad where he told the magis-
11 trate, Cantwell used a gel mace pepper spray at my face and
12 caused me to lose my vision temporarily. In his testimony
13 this morning he talked about four deployments. He said the
14 last two didn't affect him. The first two did and he iden-
15 tified Mr. Cantwell. The Court has concern that there's
16 been a case pending here for two and a half months based on
17 the testimony of Mr. Goad that Cantwell sprayed him at his
18 face and there is nothing about overspray and the Common-
19 wealth relies on overspray in this case. In the Court's
20 opinion it does two things. It raises into question what
21 Mr. Goad's recollections are. And the other one is a con-
22 cern that Mr. Cantwell should be forced to stand trial on a
23 warrant where the complainant says he did it, he did it at
24 my face where he could identify somebody and then there is
25 a representation a day before the preliminary hearing that

1 he's not certain about it. I don't think Mr. Cantwell
2 should stand trial on that. The Court is going to dismiss
3 that charge.

4 In regard to the other two charges, the case of
5 violation of 18.2-52 which is a charge of maliciously in-
6 juring Emily Gorcenski by release of a caustic substance.
7 In the Court's view of the Court found significant and, in
8 fact, the Court asked Ms. Gorcenski the question itself.
9 The only verbal communication between Mr. Cantwell and Ms.
10 Gorcenski for the entire day was when she approached him at
11 No Name Field and asked him about an incident at Walmart.
12 Other than that there is no evidence that Mr. Cantwell did
13 or said anything to Ms. Gorcenski. The incident that she
14 describes, she said it was most---she was sprayed most
15 likely by Mr. Cantwell based upon their vicinity. The tes-
16 timony that's unchallenged, that there was someone else
17 there who was described as dragon man that was releasing a
18 spray. She says that she was affected by the overspray.
19 There is no way for the Court to determine that Mr. Cant-
20 well maliciously caused bodily injury to Ms. Gorcenski.
21 When the Court hears a malicious bodily injury case, the
22 testimony generally isn't, was well I was affected by what
23 the defendant did. And here in close proximity, again the
24 unquestioned evidence is that there was another person who
25 was releasing a spray. The Court can't find from that evi-

1 dence that there's probable cause for Mr. Cantwell to stand
2 trial on that charge.

3 The third charge is under the same code section
4 as Mr. Goad's, the one that Mr. Goad obtained which is ma-
5 liciously releasing a caustic substance. There's been var-
6 ious descriptions in regard to what the substance was.
7 It's been described as mace primarily in questions. It's
8 been described as pepper spray. Mr. Cantwell describes it
9 as pepper spray. It is a caustic substance whatever it was
10 and that part of the statute is met. There isn't any issue
11 that Mr. Cantwell deployed the pepper spray a number of
12 times in a crowd. He doesn't challenge that. It's not an
13 issue of controversy for the Court. The issue of contro-
14 versy is whether or not Mr. Cantwell deploying the pepper
15 spray was done in self-defense. That's part of the statute,
16 but ultimately it's up to the trier of fact. So again,
17 there's no issue that he had the caustic substance.
18 There's no issue that he sprayed it four times. There's no
19 issue that it was in a public place and the Court finds
20 that an issue of self-defense, that will have to be re-
21 solved by the trier of fact. So the Court finds there is
22 probable cause in regard to the case 18.2-312. It's case
23 number GC1711628. The Court will certify that case to the
24 circuit court for what action it feels is appropriate. In
25 the regard to the cases that have been dismissed, Mr. Trac-

1 ci knows he can proceed as he wishes in regard to that. So
2 that will end the criminal case.

3 HEARING CONCLUDED.
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1 STATE OF VIRGINIA AT LARGE:

2 I, Brittany L. Herring, Notary Public in and for
3 the State of Virginia at Large, having been so duly commis-
4 sioned and qualified, do certify that the foregoing court
5 proceeding was so duly taken at the time and place speci-
6 fied in the caption hereof.

7 I do further certify that said hearing was
8 correctly taken by mechanical methods and that the same was
9 accurately written out in full and transcribed into the
10 English language by Sarah R. Lane and that said transcript
11 is a true, accurate and correct record of the testimony by
12 said witness.

13 I further certify that I am neither attorney nor
14 counsel for or related to or employed by any of the parties
15 to the action in which this hearing was taken and, further,
16 that I am not a relative or employee of any attorney or
17 counsel employed by the parties hereto or financially in-
18 terested in this action.

19 My commission expires November 30, 2019.

20 Given under my hand and seal this 12th day of De-
21 cember, 2017.

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STATE OF VIRGINIA AT LARGE:

LANE'S COURT REPORTERS, INC.

401 8TH STREET NE
CHARLOTTESVILLE, VA 22902

1 I, Brittany L. Herring, Notary Public in and for
2 the State of Virginia at Large, having been so duly commis-
3 sioned and qualified, do certify that the foregoing court
4 proceeding were so duly taken at the time and place speci-
5 fied in the caption hereof.

6 I do further certify that said hearing was
7 correctly taken by mechanical methods and that the same was
8 accurately written out in full and transcribed into the
9 English language by (typist name) and that said transcript
10 is a true, accurate and correct record of the testimony by
11 said witness.

12 I further certify that I am neither attorney nor
13 counsel for or related to or employed by any of the parties
14 to the action in which this hearing was taken and, further,
15 that I am not a relative or employee of any attorney or
16 counsel employed by the parties hereto or financially in-
17 terested in this action.

18 My commission expires November 30, 2019.

19 Given under my hand and seal this 3rd day of De-
20 cember, 2016.